

PATENT

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First Named Inventor:	Paul Blowers	Confirmation No.	6963
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Title:	PRIORITIZED PRESENTATION OF MEDICAL DEVICE EVENTS		

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CERTIFICATE UNDER 37 CFR 1.8 I hereby certify that this correspondence is being transmitted via the United States Patent and Trademark Office electronic filing system on May 10, 2011.

By:/Allison M. Hughes/  
Name: Allison M. Hughes

**BRIEF ON APPEAL**

Board of Patent Appeals and Interferences  
Commissioner for Patents  
Alexandria, VA 22313-1450

Sir:

This is an appeal from the Office Action mailed on October 12, 2010, finally rejecting claims 1, 3–11, 13–22, 24–29, 31–36, 38–43 and 45–47, and the Advisory Action mailed on December 22, 2010, affirming the rejection of those claims. A Notice of Appeal was filed on February 11, 2011. A Petition for an Extension of Time of one month and the associated fee are submitted with this Brief on Appeal. The period for filing this Brief on Appeal, as extended by one month, runs through May 11, 2011.

Please charge Deposit Account No. 50-1778 the amount of \$540.00 for submission of this Appeal Brief, as required by 37 C.F.R. §41.37(a)(2) for a large entity. Please charge any additional fees that may be required or credit any overpayment to Deposit Account No. 50-1778.

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### **REAL PARTY OF INTEREST**

The Real Party of Interest is Medtronic, Inc. of Minneapolis, Minnesota, United States of America.

### **RELATED APPEALS AND INTERFERENCES**

There are no related appeals or interferences for the above-referenced patent application.

### **STATUS OF CLAIMS**

Claims 1, 3–11, 13–22, 24–29, 31–36, 38–43 and 45–47 are pending and are the subject of this Appeal. Claims 2, 12, 23, 30, 37 and 44 were previously canceled.

Claims 1, 3, 4, 7–11, 13, 16–19, 22, 24, 25, 28, 29, 31–36, 38–41, 43 and 47 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Rueter (U.S. Patent No. 5,944,745) in view of Hatlestad et al. (U.S. Patent Publ. No. 2004/0122294) and Duffin et al (U.S. Patent No. 6,292,698).

Claims 5, 6, 14, 15, 26 and 27 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Rueter in view of Hatlestad et al. and Duffin et al., and further in view of Hwang (U.S. Patent No. 5,920,271).

Claims 20, 21, 42 and 46 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Rueter in view of Hatlestad et al. and Duffin et al., and further in view of Webb et al. (U.S. Patent No. 7,060,031).

Claim 45 stands rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Rueter in view of Hatlestad et al. and Duffin et al., and further in view of Tamura (U.S. Patent No. 5,434,611).

The claims on appeal are set forth below in APPENDIX A.

### **STATUS OF AMENDMENTS**

No amendments have been filed subsequent to the Final Rejection mailed October 12, 2010.

### **SUMMARY OF CLAIMED SUBJECT MATTER**

Claim 1 recites a method comprising receiving events at a prioritization engine from one or more remote monitors, wherein the one or more remote monitors obtain the events from interrogation of a plurality of medical devices implanted within different patients, wherein the events include therapy events and diagnostic events, and wherein the prioritization engine and the one or more remote monitors are both external to the patients.<sup>1</sup> The method further comprises prioritizing, with the prioritization engine, the received events.<sup>2</sup> The method further comprises presenting, with a user interface device, a list of the patients and a list of the events for each of the patients based on the prioritization.<sup>3</sup>

Claim 8 recites a method comprising interrogating, with one or more remote monitors, a plurality of medical devices implanted in different patients to obtain event data.<sup>4</sup> The method further comprises receiving, with a prioritization engine, the event data from the one or more remote monitors, wherein the event data describes a plurality of events that includes at least one of a therapy event and a diagnostic event, and wherein the prioritization engine is external to the patients.<sup>5</sup> The method further comprises assigning, with the prioritization engine, a relative importance to each of the events described by the received event data.<sup>6</sup>

Claim 17 recites a system comprising a prioritization engine to receive events from one or more remote monitors, and to prioritize the received events, wherein the one or more remote monitors obtain the events from interrogation of a plurality of medical devices implanted within different patients, wherein the events include therapy events and diagnostic events, and wherein

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<sup>1</sup> See, e.g., Appellant's specification, p. 2, ll. 18–19; p. 2, ll. 22–24; p. 2, ll. 28–29; p. 3, ll. 2–3; p. 3, ll. 7–9; p. 3, l. 17; p. 4, l. 3; p. 4, ll. 9–10; p. 4, ll. 24–25; p. 5, ll. 10–17; p. 10, ll. 15–17; p. 11, ll. 1–10; FIGS. 1–3, 5 and 6 (IMD 12, remote monitor 14, prioritization engine 16, blocks 60 and 74).

<sup>2</sup> See, e.g., Appellant's specification, p. 2, ll. 27–28; p. 3, ll. 20–21; p. 4, ll. 12–13; p. 4, ll. 28–29; p. 6, ll. 6–27; p. 10, ll. 17–19; p. 11, ll. 21–24; FIGS. 1–3, 5 and 6 (prioritization engine 16, blocks 62 and 86).

<sup>3</sup> See, e.g., Appellant's specification, p. 2, ll. 19–20; p. 2, ll. 29–30; p. 3, ll. 3–4; p. 4, ll. 29–30; p. 7, ll. 3–8; p. 8, l. 18 to p. 10, l. 13; p. 10, ll. 19–23; FIG 4 (patient information 50, event summary 42).

<sup>4</sup> See, e.g., Appellant's specification, p. 4, ll. 24–25; p. 5, ll. 10–17; p. 11, ll. 1–10; FIGS. 1–3, 5 and 6 (IMD 12, remote monitor 14, blocks 60 and 74).

<sup>5</sup> See, e.g., Appellant's specification, p. 2, ll. 18–19; p. 2, ll. 22–24; p. 2, ll. 28–29; p. 3, ll. 2–3; p. 3, ll. 7–9; p. 3, l. 17; p. 4, l. 3; p. 4, ll. 9–10; p. 5, ll. 14–15; p. 10, ll. 15–17; p. 11, ll. 8–9; FIGS. 1–3, 5 and 6 (remote monitor 14, prioritization engine 16, blocks 60 and 74).

<sup>6</sup> See, e.g., Appellant's specification, p. 2, ll. 24–25; p. 3, ll. 8–9; p. 6, ll. 24–25; p. 10, ll. 17–19; FIGS. 1–3, 5 and 6 (prioritization engine 16, blocks 62 and 86).

the prioritization engine and the one or more remote monitors are both external to the patients.<sup>7</sup> The system further comprises a user interface device to present a list of the patients and a list of the events for each of the patients based on the prioritization.<sup>8</sup>

Claim 29 recites a computer-readable medium comprising instructions for causing a programmable processor to receive events from a plurality of remote monitors, wherein each of the remote monitors obtains the events from interrogation of a medical device implanted within a different patient, wherein the events include therapy events and diagnostic events, and wherein the programmable processor and the remote monitors are both external to the patients.<sup>9</sup> The computer-readable medium further comprises instructions for causing a programmable processor to prioritize the received events.<sup>10</sup> The computer-readable medium further comprises instructions for causing a programmable processor to present a list of the patients and a list of the events for each of the patients based on the prioritization.<sup>11</sup>

Claim 33 recites a computer-readable medium comprising instructions for causing a programmable processor to receive event data from one or more remote monitors, wherein the one or more remote monitors interrogate a plurality of medical devices implanted in different patients to obtain the event data, wherein the event data describes a plurality of events that includes at least one of a therapy event and a diagnostic event.<sup>12</sup> The computer-readable medium further comprises instructions for causing a programmable processor to assign a relative importance to each event described by the received event data, wherein the programmable processor is external to the patients.<sup>13</sup>

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<sup>7</sup> See, e.g., Appellant's specification, p. 2, ll. 18–19; p. 2, ll. 22–24; p. 2, ll. 27–29; p. 3, ll. 2–3; p. 3, ll. 7–9; p. 3, l. 17; p. 3, ll. 20–21; p. 4, l. 3; p. 4, ll. 9–10; p. 4, ll. 12–13; p. 4, ll. 24–25; p. 4, ll. 28–29; p. 5, ll. 10–17; p. 10, ll. 15–17; p. 6, ll. 6–27; p. 10, ll. 17–19; p. 11, ll. 1–10; p. 11, ll. 21–24; FIGS. 1–3, 5 and 6 (IMD 12, remote monitor 14, prioritization engine 16, blocks 60, 62, 74 and 86).

<sup>8</sup> See, e.g., Appellant's specification, p. 2, ll. 19–20; p. 2, ll. 29–30; p. 3, ll. 3–4; p. 4, ll. 29–30; p. 7, ll. 3–8; p. 8, l. 18 to p. 10, l. 13; p. 10, ll. 19–23; FIG 4 (patient information 50, event summary 42).

<sup>9</sup> See, e.g., Appellant's specification, p. 2, ll. 18–19; p. 2, ll. 22–24; p. 2, ll. 28–29; p. 3, ll. 2–3; p. 3, ll. 7–9; p. 3, l. 17; p. 4, l. 3; p. 4, ll. 9–10; p. 4, ll. 24–25; p. 5, ll. 10–17; p. 10, ll. 15–17; p. 11, ll. 1–10; FIGS. 1–3, 5 and 6 (IMD 12, remote monitor 14, prioritization engine 16, blocks 60 and 74).

<sup>10</sup> See, e.g., Appellant's specification, p. 2, ll. 27–28; p. 3, ll. 20–21; p. 4, ll. 12–13; p. 4, ll. 28–29; p. 6, ll. 6–27; p. 10, ll. 17–19; p. 11, ll. 21–24; FIGS. 1–3, 5 and 6 (prioritization engine 16, blocks 62 and 86).

<sup>11</sup> See, e.g., Appellant's specification, p. 2, ll. 19–20; p. 2, ll. 29–30; p. 3, ll. 3–4; p. 4, ll. 29–30; p. 7, ll. 3–8; p. 8, l. 18 to p. 10, l. 13; p. 10, ll. 19–23; FIG 4 (patient information 50, event summary 42).

<sup>12</sup> See, e.g., Appellant's specification, p. 2, ll. 18–19; p. 2, ll. 22–24; p. 2, ll. 28–29; p. 3, ll. 2–3; p. 3, ll. 7–9; p. 3, l. 17; p. 4, l. 3; p. 4, ll. 9–10; p. 4, ll. 24–25; p. 5, ll. 10–17; p. 10, ll. 15–17; p. 11, ll. 1–10; FIGS. 1–3, 5 and 6 (IMD 12, remote monitor 14, prioritization engine 16, blocks 60 and 74).

<sup>13</sup> See, e.g., Appellant's specification, p. 2, ll. 24–25; p. 3, ll. 8–9; p. 6, ll. 24–25; p. 10, ll. 17–19; FIGS. 1–3, 5 and 6 (prioritization engine 16, blocks 62 and 86).

Claim 39 recites a device comprising a prioritization engine to receive events from a plurality of remote monitors, and to prioritize the received events, wherein each of the remote monitors obtains the events from interrogation of a medical device implanted within a different patient, wherein the events include therapy events and diagnostic events, and wherein the prioritization engine and the remote monitors are both external to the patient.<sup>14</sup> The device further comprises a database to store the prioritized events.<sup>15</sup>

### **GROUND OF REJECTION TO BE REVIEWED ON APPEAL**

Appellant submits the following grounds of rejection to be reviewed on Appeal:

1. The first ground of rejection presented for review is the rejection of claims 1, 3, 4, 7–11, 13, 16–19, 22, 24, 25, 28, 29, 31–36, 38–41, 43 and 47 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Rueter (U.S. Patent No. 5,944,745) in view of Hatlestad et al. (U.S. Patent Publ. No. 2004/0122294) and Duffin et al. (U.S. Patent No. 6,292,698).

2. The second ground of rejection presented for review is the rejection of claims 5, 6, 14, 15, 26 and 27 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Rueter in view of Hatlestad et al. and Duffin et al., and further in view of Hwang (U.S. Patent No. 5,920,271).

3. The third ground of rejection presented for review is the rejection of claims 20, 21, 42 and 46 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Rueter in view of Hatlestad et al. and Duffin et al., and further in view of Webb et al. (U.S. Patent No. 7,060,031).

4. The fourth ground of rejection presented for review is the rejection of claim 45 under 35 U.S.C. § 103(a) as allegedly being unpatentable over Rueter in view of Hatlestad et al. and Duffin et al., and further in view of Tamura (U.S. Patent No. 5,434,611).

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<sup>14</sup> See, e.g., Appellant's specification, p. 2, ll. 18–19; p. 2, ll. 22–24; p. 2, ll. 27–29; p. 3, ll. 2–3; p. 3, ll. 7–9; p. 3, l. 17; p. 3, ll. 20–21; p. 4, l. 3; p. 4, ll. 9–10; p. 4, ll. 12–13; p. 4, ll. 24–25; p. 4, ll. 28–29; p. 5, ll. 10–17; p. 10, ll. 15–17; p. 6, ll. 6–27; p. 10, ll. 17–19; p. 11, ll. 1–10; p. 11, ll. 21–24; FIGS. 1–3, 5 and 6 (IMD 12, remote monitor 14, prioritization engine 16, blocks 60, 62, 74 and 86).

<sup>15</sup> See, e.g., Appellant's specification, p. 10, ll. 19–20; p. 11, ll. 23–24; FIGS. 2, 3, 5 and 6 (event database 22, blocks 64 and 88).

## **ARGUMENT**

### **FIRST GROUND OF REJECTION UNDER APPEAL**

#### ***GROUP 1 – (Claims 1, 3, 4 and 7)***

Claims 1, 3, 4 and 7 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Rueter (U.S. Patent No. 5,944,745) in view of Hatlestad et al. (U.S. Patent Publ. No. 2004/0122294) and Duffin et al (U.S. Patent No. 6,292,698).

The Examiner bears the initial burden of factually supporting any *prima facie* case of obviousness under 35 U.S.C. § 103(a). In order to establish a *prima facie* case of obviousness, the Examiner must (1) determine the scope and content of the prior art; (2) ascertain the differences between the claimed invention and the prior art; and (3) resolve the level of ordinary skill in the art. After these factual inquiries have been properly resolved, the Examiner must then explain why the differences between the prior art and the claimed invention would have been obvious to a person of ordinary skill in the art at the time of Appellant's invention.<sup>16</sup>

The Examiner bears the burden of producing a preponderance of the evidence in support of all factual findings relied upon in support of a conclusion of obviousness.<sup>17</sup> If the Examiner is unable to provide sufficient evidence in support of the Examiner's factual findings, then any obviousness rejection based upon such factual findings should be reversed.

Appellant submits that the Examiner erred by: (1) failing to properly determine the scope and content of the prior art; (2) failing to properly ascertain the differences between the invention of claim 1 and the prior art; and (3) failing to provide a rationale sufficient to explain why the differences acknowledged by the Examiner between Rueter in view of Hatlestad et al. and Appellant's claim 1 would have been obvious to a person of ordinary skill in the art at the time of Appellant's invention. Accordingly, the Examiner has failed to establish a *prima facie* case of obviousness with respect to Appellant's claim 1.

Because the Examiner has failed to establish a *prima facie* case of obviousness with respect to claim 1, the burden has not shifted to the Appellant to rebut such a rejection. In other words, Appellant cannot be expected to respond to such a rejection until the Examiner provides

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<sup>16</sup> Manual of Patent Examining Procedure (MPEP) § 2141; *Graham v. John Deere Co.*, 383 U.S. 1 (1966).

<sup>17</sup> MPEP § 2142; *Ex parte Frye*, Appeal 2009-006013, pg. 4 (Board of Patent Appeals and Interferences, *precedential opinion*, 2010) (citing *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (stating that "a preponderance of the evidence must show nonpatentability before the PTO may reject the claims of a patent application.")).

the requisite analysis and evidence necessary to properly support a *prima facie* case of obviousness. Accordingly, Appellant respectfully requests reversal of the rejection of these claims under 35 U.S.C. § 103(a).

*A. RUETER IN VIEW OF HATLESTAD ET AL. AND DUFFIN ET AL. FAILS TO DISCLOSE OR SUGGEST ALL OF THE LIMITATIONS RECITED IN APPELLANT'S CLAIM 1.*

Appellant's claim 1 recites a method comprising receiving events at a prioritization engine from one or more remote monitors, wherein the one or more remote monitors obtain the events from interrogation of a plurality of medical devices implanted within different patients, wherein the events include therapy events and diagnostic events, and wherein the prioritization engine and the one or more remote monitors are both external to the patients. The method further includes prioritizing, with the prioritization engine, the received events; and presenting, with a user interface device, a list of the patients and a list of the events for each of the patients based on the prioritization.

The applied references fail to disclose or suggest all of the requirements of Appellant's claim 1. As one example, the applied references fail to disclose or suggest "*prioritizing, with the prioritization engine, the received events; and presenting, with a user interface device, a list of the patients and a list of the events for each of the patients based on the prioritization,*" as recited in Appellant's claim 1.

More specifically, each of the applied references fails to disclose "*prioritizing, with the prioritization engine, the received events; and presenting, with a user interface device, a list of the patients and a list of the events for each of the patients based on the prioritization,*" as recited in Appellant's claim 1. Moreover, the applied references fail to provide any suggestion that would have rendered it obvious to one of ordinary skill in the art, at the time of Appellant's invention, to arrive at the invention defined by Appellant's claim 1. Accordingly, Appellant respectfully requests reversal of the rejection of Appellant's claim 1.

*B. THE EXAMINER ERRED BY PRESENTING A FACTUAL FINDING THAT IS UNINTELLIGIBLE.*



In support of the rejection of Appellant's claim 1, the Examiner asserted that "Rueter teaches a method comprising . . . and with the prioritization engine, the received events."<sup>18</sup> This assertion is unintelligible because there does not appear to be any underlying noun or verb, which the prepositional phrase "with the prioritization engine" modifies. Given that there appears to be a verb missing from the phrase at issue, it is also unclear if the phrase "the received events" is a direct object of the verb "teaches" or some other verb not explicitly clarified. Consequently, the Examiner's factual finding that "Rueter teaches a method comprising . . . and with the prioritization engine, the received events" has no discernable meaning. To the extent that the Examiner's conclusion of obviousness relies upon the factual finding that "Rueter teaches a method comprising . . . and with the prioritization engine, the received events," Appellant respectfully requests reconsideration.

For at least the reasons described above, the Examiner's factual finding that "Rueter teaches a method comprising . . . and with the prioritization engine, the received events" is unintelligible. For purposes of the remainder of the arguments with respect to claim 1, Appellant will assume that the Examiner did not rely upon this factual finding in reaching the Examiner's conclusion of obviousness.

*C. THE EXAMINER ERRED BY FAILING TO PROPERLY ASCERTAIN THE DIFFERENCES BETWEEN THE INVENTION OF CLAIM 1 AND THE PRIOR ART.*

In support of the rejection of Appellant's claim 1, the Examiner appears to have relied upon two different combinations of references. The Examiner's first combination of references is the Examiner's proposed combination of Rueter in view of Hatlestad et al.<sup>19</sup> The Examiner's second combination of references includes the Examiner's first combination of references in view of Duffin et al.<sup>20</sup>

With respect to the first combination of references, the Examiner indicated that the first combination does not teach "prioritizing events obtained from a plurality of medical devices

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<sup>18</sup> Final Office Action, page 3, paragraph 4, lines 1-4.

<sup>19</sup> Final Office Action, page 4, line 4 ("Rueter in view of Hatlestad does not teach . . .").

<sup>20</sup> Final Office Action, page 4, lines 9-12 ("One of ordinary skill in the art at the time of invention would have found it obvious to combine . . . Rueter . . . Hatlestad . . . and . . . Duffin").

implanted in different patients; and presenting a list of the patients and a list of the events for each of the patients based on the prioritization.”<sup>21</sup> However, the Examiner did not acknowledge that the Examiner’s first combination also does not teach “receiving events at a prioritization engine from one or more remote monitors, wherein the one or more remote monitors obtain the events from interrogation of a plurality of medical devices implanted within different patients, wherein the events include therapy events and diagnostic events, and wherein the prioritization engine and the one or more remote monitors are both external to the patients,” as recited in Appellant’s claim 1.

In order to establish a *prima facie* case of obviousness, the Examiner has the burden of explaining why the differences between the prior art and the claimed invention would have been obvious to a person of ordinary skill in the art at the time of Appellant’s invention. Such an explanation is essential to support an obviousness rejection. In order to give a sufficient explanation for a conclusion of obviousness, it is imperative that all of the differences between the claimed invention and the prior art be properly identified. The failure to identify all differences between the prior art and the claimed invention results in a rationale for obviousness that is insufficient to explain why the overlooked differences would have been obvious to a person of ordinary skill in the art at the time of Appellant’s invention.

As discussed above, the Examiner did not identify the following difference between the first combination and the invention of Appellant’s claim 1: the Examiner’s first combination does not teach “receiving events at a prioritization engine from one or more remote monitors, wherein the one or more remote monitors obtain the events from interrogation of a plurality of medical devices implanted within different patients, wherein the events include therapy events and diagnostic events, and wherein the prioritization engine and the one or more remote monitors are both external to the patients,” as recited in Appellant’s claim 1. This constitutes a difference between the Examiner’s proposed combination of prior art and the invention of Appellant’s claim 1 that must be taken into consideration by the Examiner. The Examiner appears to have overlooked this difference, and therefore, any rationale in support of the Examiner’s conclusion of obvious fails to take into account this overlooked difference. For at least these reasons, Appellant respectfully requests reversal of the rejection to Appellant’s claim 1.

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<sup>21</sup> Final Office Action, page 4, lines 4–6.

*D. THE EXAMINER ERRED BY FAILING TO PROVIDE A RATIONALE SUFFICIENT TO EXPLAIN WHY THE DIFFERENCES ACKNOWLEDGED BY THE EXAMINER BETWEEN RUETER IN VIEW OF HATLESTAD ET AL. AND APPELLANT'S CLAIM 1 WOULD HAVE BEEN OBVIOUS TO A PERSON OF ORDINARY SKILL IN THE ART AT THE TIME OF APPELLANT'S INVENTION.*

In support of the rejection of Appellant's claim 1, the Examiner appears to have relied upon two different combinations of prior art. The Examiner's first combination of references is the Examiner's proposed combination of Rueter in view of Hatlestad et al.<sup>22</sup> The second combination of prior art is the Examiner's proposed combination of the first combination of references in view of Duffin et al.<sup>23</sup>

The Examiner acknowledged that the Examiner's first combination of prior art, i.e., Rueter in view of Hatlestad et al., fails to teach "prioritizing events obtained from a plurality of medical devices implanted in different patients; and presenting a list of the patients and a list of the events for each of the patients based on the prioritization."<sup>24</sup> It follows that the Examiner's first combination of prior art also fails to teach "prioritizing, with the prioritization engine, the received events; and presenting, with a user interface device, a list of the patients and a list of the events for each of the patients based on the prioritization," as recited in Appellant's claim 1. The failure of Rueter in view of Hatlestad et al. to teach these features of Appellant's claim 1 constitutes a difference between Appellant's claim 1 and the prior art.

In order to explain why this difference would have been obvious to a person of ordinary skill in the art, the Examiner turned to Duffin et al. The Examiner proposed a second combination of prior art, which includes the Examiner's first combination of prior art in view of Duffin et al., and attempted to give a rationale as to why the Examiner's second combination of prior art would have been obvious to one of ordinary skill in the art at the time of Appellant's invention. The Examiner's explanation, however, is not sufficient because the Examiner's second combination of prior art does not include the features already acknowledged by the Examiner to be missing from the Examiner's first combination of prior art.

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<sup>22</sup> Final Office Action, page 4, line 4 ("Rueter in view of Hatlestad does not teach . . .").

<sup>23</sup> Final Office Action, page 4, lines 9–12 ("One of ordinary skill in the art at the time of invention would have found it obvious to combine . . . Rueter . . . Hatlestad . . . and . . . Duffin").

<sup>24</sup> Final Office Action, page 4, lines 4–6.

More specifically, the Examiner's second combination of prior art does not include "prioritizing, with the prioritization engine, the received events; and presenting, with a user interface device, a list of the patients and a list of the events for each of the patients based on the prioritization," as recited in Appellant's claim 1. As already discussed above, the Examiner acknowledged that Rueter in view of Hatlestad et al. fails to teach "prioritizing, with the prioritization engine, the received events; and presenting, with a user interface device, a list of the patients and a list of the events for each of the patients based on the prioritization," as recited in Appellant's claim 1. Duffin et al. also fails to teach such features. The Examiner has not proposed to modify either of the Examiner's first combination of prior art or Duffin et al. to include such features. Therefore, the Examiner's second combination of prior art does not include the above-identified features.

In other words, if the teachings of a first set of references (i.e., Rueter in view Hatlestad et al.) and the teachings of a second set of references (i.e., Duffin et al.) each fail to disclose one or more features of Appellant's claim 1, then the combination of the teachings also cannot teach these features without at least one of the references being modified to include such features. The Examiner's proposed combination involves "combining the prioritization method taught by [Rueter] with the features of Hatlestad to and the telemetry system for implantable medical devices taught by Duffin." However, the Examiner's proposed combination mentions nothing about modifying any of the references to include "prioritizing, with the prioritization engine, the received events; and presenting, with a user interface device, a list of the patients and a list of the events for each of the patients based on the prioritization," as recited in Appellant's claim 1. Because these features were not taught individually within the references, any combination of the references that does not involve a modification of the references cannot produce the invention defined by Appellant's claim 1.

Again, the Examiner's second combination of prior art does not include all of the features of Appellant's claim 1. These features constitute differences between the invention of Appellant's claim 1 and the prior art of record which must be taken into consideration by the Examiner. Because the Examiner's second combination of prior art does not take into account such differences, the Examiner's explanation of why the second combination of prior art would have been obvious to one of ordinary skill in the art at the time of the invention is not sufficient to explain why the differences between Appellant's claim 1 and the prior art would have been

obvious to one of ordinary skill in the art at the time of Appellant's invention. For at least these reasons, Appellant respectfully requests reversal of the rejection to Appellant's claim 1.

*E. THE EXAMINER ERRED BY FAILING TO PROPERLY DETERMINE THE SCOPE AND CONTENT OF THE PRIOR ART.*

The factual findings relied upon by the Examiner in support of a rejection must be supported by a preponderance of the evidence on record.<sup>25</sup> In the instant case, the Examiner relied upon one or more of the factual findings with regard to the scope and content of the prior art that are not supported by the evidence on record. Because such factual findings are not supported by the evidence on record, the Examiner's determination of the scope and content of the prior art is not correct.

If the scope and content of the prior art is not properly determined, differences between the prior art and Appellant's claimed invention may be overlooked, which may in turn result in an explanation of obviousness that is insufficient to explain why the overlooked differences would have been obvious to a person of ordinary skill in the art at the time of Appellant's invention. Thus, if the evidentiary record does not support the Examiner's factual findings regarding the scope and content of the prior art, any obviousness rejection based upon such factual findings cannot be sustained.

In support of the rejection of Appellant's claim 1, the Examiner asserted that "Rueter teaches presenting, with a user interface device, a list of the events based on the prioritization."<sup>26</sup> The Examiner did not indicate whether or not the alleged prioritization in Rueter corresponds to the "prioritization" recited in Appellant's claim 1. If the Examiner is of the position that the alleged prioritization in Rueter can be interpreted as the "prioritization" recited in Appellant's claim 1, then the Examiner erred in determining the scope and content of the prior art.

More specifically, the "prioritization" recited in claim 1 relates back to the "prioritizing, with the prioritization engine, the received events" feature of claim 1. The "received events" in claim 1 relate back to the events recited in the following limitation of claim 1: "receiving events

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<sup>25</sup> MPEP § 2142; *Ex parte Frye*, Appeal 2009-006013, pg. 4 (Board of Patent Appeals and Interferences, *precedential opinion*, 2010) (citing *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (stating that "a preponderance of the evidence must show nonpatentability before the PTO may reject the claims of a patent application.")).

<sup>26</sup> Final Office Action dated October 12, 2010, page 3, paragraph 4, lines 1-5.

at a prioritization engine from one or more remote monitors.” The Examiner already acknowledged that Rueter does not teach “receiving events from a remote monitor.”<sup>27</sup> Thus, Rueter does not disclose the “received events” recited in Appellant’s claim 1. Consequently, Rueter also does not disclose “prioritizing, with the prioritization engine, the received events,” as recited in Appellant’s claim 1 (emphasis added). Therefore, any alleged “prioritization” identified by the Examiner in Rueter cannot be reasonably interpreted as the “prioritization” recited in Appellant’s claim 1. Accordingly, the evidence on record fails to support the Examiner’s factual finding that Rueter discloses “presenting, with a user interface device, a list of the events based on the prioritization [of Appellant’s claim 1].” For at least these reasons, Appellant respectfully requests reversal of the rejection of claim 1.

Appellant notes that the argument described above applies if the Examiner is of the position that the alleged prioritization in Rueter can be interpreted as the “prioritization” recited in Appellant’s claim 1. If the Examiner is of the position that the alleged prioritization in Rueter cannot be interpreted as the “prioritization” recited in Appellant’s claim 1, then Appellant respectfully requests clarification in the Reply Brief.

Also in support of the rejection of Appellant’s claim 1, the Examiner asserted that “Hatlestad teaches the prioritization engine to be external.”<sup>28</sup> The Examiner did not indicate whether or not the alleged prioritization engine in Hatlestad et al. corresponds to the “prioritization engine” recited in Appellant’s claim 1. If the Examiner is of the position that the alleged prioritization engine in Hatlestad et al. can be interpreted as the “prioritization engine” recited in Appellant’s claim 1, then the Examiner erred in determining the scope and content of the prior art.

More specifically, the “prioritization engine” recited in claim 1 relates back to the “receiving events at a prioritization engine from one or more remote monitors” limitation of claim 1. Claim 1 specifies that “the one or more remote monitors obtain the events from interrogation of a plurality of medical devices implanted within different patients.” The “prioritization engine” recited in claim 1 also relates back to the “prioritizing, with the prioritization engine, the received events” limitation of claim 1. When alleging that Hatlestad et al. teaches a prioritization engine, the Examiner appears to be referring to the wellness

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<sup>27</sup> Final Office Action dated October 12, 2010, page 3, paragraph 4, lines 7–8.

<sup>28</sup> Final Office Action dated October 12, 2010, page 3, paragraph 4, lines 8–9.

monitoring device (WMD) described in Hatlestad et al. However, the WMD in Hatlestad et al. does not receive events from one or more remote monitors that obtain the events from interrogation of a plurality of medical devices implanted within different patients, much less prioritize such events. In fact, the Examiner already acknowledged that Rueter in view of Hatlestad does not teach “prioritizing events obtained from a plurality of medical devices implanted in different patients.”<sup>29</sup> Therefore, the alleged “prioritization engine” identified by the Examiner in Hatlestad et al. cannot be reasonably interpreted as the “prioritization engine” recited in Appellant’s claim 1.

Because the Examiner’s alleged prioritization engine in Hatlestad et al. cannot be reasonably interpreted as the “prioritization engine” recited in Appellant’s claim 1, any allegation that the alleged prioritization engine in Hatlestad et al. is external to the patient does not disclose that the “prioritization engine” of Appellant’s claim 1 is “external to the patients.” Accordingly, the evidence on record fails to support the Examiner’s factual finding that Rueter discloses “the prioritization engine [of claim 1] to be external [to the patients],” as suggested by the Examiner. For at least these reasons, Appellant respectfully requests reversal of the rejection of claim 1.

Appellant notes that the argument described above applies if the Examiner is of the position that the alleged prioritization engine in Hatlestad et al. can be interpreted as the “prioritization engine” recited in Appellant’s claim 1. If the Examiner is of the position that the alleged prioritization engine in Hatlestad et al. cannot be interpreted as the “prioritization engine” recited in Appellant’s claim 1, then Appellant respectfully requests clarification in the Reply Brief.

*F. THE EXAMINER ERRED BY PROVIDING A RATIONALE IN THE ADVISORY ACTION THAT IS NOT SUPPORTED BY THE FACTUAL FINDINGS WHICH ARE NECESSARY FOR THE USE OF SUCH A RATIONALE.*

In the Advisory Action dated December 22, 2010, the Examiner stated that “[t]he well know elements described are merely a combination of old elements, and in the combination, each element merely would have performed the same function as it did separately, and one of ordinary

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<sup>29</sup> Final Office Action, page 4, lines 4-6.

skill in the art would have recognized that the results of the combination were predictable.” The rationale provided by the Examiner in the Advisory Action appears to be the “Combining Prior Art Elements According to Known Methods to Yield Predictable Results” rationale outlined in Section 2143 of the Manual of Patent Examining Procedure (MPEP).

According to the MPEP, in order to reject a claim based on such a rationale, the Examiner “must articulate the following: (1) a finding that the prior art included each element claimed, although not necessarily in a single prior art reference, with the only difference between the claimed invention and the prior art being the lack of actual combination of the elements in a single prior art reference; (2) a finding that one of ordinary skill in the art could have combined the elements as claimed by known methods, and that in combination, each element merely performs the same function as it does separately; (3) a finding that one of ordinary skill in the art would have recognized that the results of the combination were predictable; and (4) whatever additional findings based on the Graham factual inquiries may be necessary, in view of the facts of the case under consideration, to explain a conclusion of obviousness.”<sup>30</sup>

The Examiner, however, has failed to articulate one or more of the factual findings needed to reject Appellant’s claim 1 based on such a rationale. For example, the Examiner failed to articulate that the prior art included each element claimed, although not necessarily in a single prior art reference, with the only difference between the claimed invention and the prior art being the lack of actual combination of the elements in a single prior art reference. Moreover, the evidence on record fails to support such a factual finding. For example, the prior art fails to disclose “presenting, with a user interface device, a list of the patients and a list of the events for each of the patients based on the prioritization,” as recited in Appellant’s claim 1. In addition, as already discussed in the previous sections, other differences exist between Appellant’s claim 1 and the prior art besides the lack of actual combination of the elements in a single prior art reference. Accordingly, to the extent that the Examiner’s rejection relies upon the rationale asserted in the Advisory Action dated December 22, 2010, Appellant requests reversal of the rejection.

In addition, the evidence on record fails to support a factual finding that one of ordinary skill in the art could have combined the elements as claimed by known methods, and that in combination, each element merely performs the same function as it does separately. As already

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<sup>30</sup> MPEP § 2143.



discussed above, the prior art fails to disclose all of the elements of Appellant's claim 1. As such, it is not possible to make a finding that each element merely performs the same function as it does separately. Accordingly, to the extent that the Examiner's rejection relies upon the rationale asserted in the Advisory Action dated December 22, 2010, Appellant respectfully requests reversal of the rejection.

*G. THE EXAMINER HAS FAILED TO ESTABLISH A PRIMA FACIE CASE OF OBVIOUSNESS WITH RESPECT TO THE FIRST GROUP OF CLAIMS.*

As discussed in detail in the previous sections, the Examiner erred by: (1) failing to properly determine the scope and content of the prior art; (2) failing to properly ascertain the differences between the invention of claim 1 and the prior art; and (3) failing to provide a rationale sufficient to explain why the differences acknowledged by the Examiner between Rueter in view of Hatlestad et al. and Appellant's claim 1 would have been obvious to a person of ordinary skill in the art at the time of Appellant's invention. Accordingly, the Examiner has failed to establish a *prima facie* case of obviousness with respect to Appellant's claim 1.

Claims 3, 4 and 7 are each dependent upon independent claim 1 and incorporate all of the limitations of independent claim 1. In support of the rejection of these claims, the Examiner relied upon the same rationale as that which was used to support the rejection of Appellant's claim 1. Accordingly, the Examiner has failed to establish a *prima facie* case of obviousness with respect to claims 3, 4 and 7 for at least the reasons described above with respect to independent claim 1. In light of the deficiencies described above with respect to the Examiner's rejection of independent claim 1, Appellant reserves further comments concerning the rejection of the dependent claims, but neither admits nor acquiesces in the propriety of the Examiner's interpretation of, or application of art to, such claims.

For at least these reasons, the Examiner has failed to establish a *prima facie* case of obviousness with respect to claims 1, 3, 4 and 7. Because the Examiner has failed to establish a *prima facie* case of obviousness, the burden has not shifted to the Appellant to rebut such a rejection. In other words, Appellant cannot be expected to respond to such a rejection until the Examiner provides the requisite analysis and evidence necessary to properly support a *prima*

*facie* case of obviousness. Accordingly, Appellant respectfully requests reversal of the rejection of these claims under 35 U.S.C. § 103(a).

**GROUP 2 – (Claims 8–11, 13 and 16)**

Claims 8–11, 13 and 16 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Rueter (U.S. Patent No. 5,944,745) in view of Hatlestad et al. (U.S. Patent Publ. No. 2004/0122294) and Duffin et al (U.S. Patent No. 6,292,698). Appellant respectfully traverses the rejection.

The Examiner bears the initial burden of factually supporting any *prima facie* case of obviousness under 35 U.S.C. § 103(a). In order to establish a *prima facie* case of obviousness, the Examiner must (1) determine the scope and content of the prior art; (2) ascertain the differences between the claimed invention and the prior art; and (3) resolve the level of ordinary skill in the art. After these factual inquiries have been properly resolved, the Examiner must then explain why the differences between the prior art and the claimed invention would have been obvious to a person of ordinary skill in the art at the time of Appellant’s invention.<sup>31</sup>

The Examiner bears the burden of producing a preponderance of the evidence in support of all factual findings relied upon in support of a conclusion of obviousness.<sup>32</sup> If the Examiner is unable to provide sufficient evidence in support of the Examiner’s factual findings, then any obviousness rejection based upon such factual findings should be reversed.

Appellant respectfully submits that the Examiner erred by: (1) failing to properly determine the scope and content of the prior art; (2) failing to properly ascertain the differences between the invention of claim 8 and the prior art; and (3) failing to provide a rationale sufficient to explain why the differences between Rueter in view of Hatlestad et al. and Appellant’s claim 8 would have been obvious to a person of ordinary skill in the art at the time of Appellant’s invention. Accordingly, the Examiner has failed to establish a *prima facie* case of obviousness with respect to Appellant’s claim 8.

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<sup>31</sup> Manual of Patent Examining Procedure (MPEP) § 2141; *Graham v. John Deere Co.*, 383 U.S. 1 (1966).

<sup>32</sup> MPEP § 2142; *Ex parte Frye*, Appeal 2009-006013, pg. 4 (Board of Patent Appeals and Interferences, *precedential opinion*, 2010) (citing *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (stating that “a preponderance of the evidence must show nonpatentability before the PTO may reject the claims of a patent application.”)).

Because the Examiner has failed to establish a *prima facie* case of obviousness with respect to claim 8, the burden has not shifted to the Appellant to rebut such a rejection. In other words, Appellant cannot be expected to respond to such a rejection until the Examiner provides the requisite analysis and evidence necessary to properly support a *prima facie* case of obviousness. Accordingly, Appellant respectfully requests reversal of the rejection of these claims under 35 U.S.C. § 103(a).

A. *RUETER IN VIEW OF HATLESTAD ET AL. AND DUFFIN ET AL. FAILS TO DISCLOSE OR SUGGEST ALL OF THE LIMITATIONS RECITED IN APPELLANT'S CLAIM 8.*

Appellant's claim 8 recites a method comprising interrogating, with one or more remote monitors, a plurality of medical devices implanted in different patients to obtain event data; receiving, with a prioritization engine, the event data from the one or more remote monitors, wherein the event data describes a plurality of events that includes at least one of a therapy event and a diagnostic event, and wherein the prioritization engine is external to the patients; and assigning, with the prioritization engine, a relative importance to each of the events described by the received event data.

The applied references fail to disclose or suggest all of the requirements of Appellant's claim 8. As one example, the applied references fail to disclose or suggest "*interrogating, with one or more remote monitors, a plurality of medical devices implanted in different patients to obtain event data; receiving, with a prioritization engine, the event data from the one or more remote monitors, wherein the event data describes a plurality of events that includes at least one of a therapy event and a diagnostic event, and wherein the prioritization engine is external to the patients; and assigning, with the prioritization engine, a relative importance to each of the events described by the received event data,*" as recited in Appellant's claim 8.

More specifically, each of the applied references fails to disclose "interrogating, with one or more remote monitors, a plurality of medical devices implanted in different patients to obtain event data; receiving, with a prioritization engine, the event data from the one or more remote monitors, wherein the event data describes a plurality of events that includes at least one of a therapy event and a diagnostic event, and wherein the prioritization engine is external to the

patients; and assigning, with the prioritization engine, a relative importance to each of the events described by the received event data,” as recited in Appellant’s claim 8. Moreover, the applied references fail to provide any suggestion that would have rendered it obvious to one of ordinary skill in the art, at the time of Appellant’s invention, to arrive at the invention defined by Appellant’s claim 8. Accordingly, Appellant respectfully requests reversal of the rejection of Appellant’s claim 8.

*B. THE EXAMINER ERRED BY PRESENTING A FACTUAL FINDING THAT IS UNINTELLIGIBLE.*

In support of the rejection of Appellant’s claim 8, the Examiner asserted the same unintelligible factual finding that was already discussed above with respect to claim 1. More specifically, the Examiner asserted that “Rueter teaches a method comprising . . . and with the prioritization engine, the received events.”<sup>33</sup> To the extent that the Examiner’s conclusion of obviousness with respect to claim 8 relies upon the factual finding that “Rueter teaches a method comprising . . . and with the prioritization engine, the received events,” Appellant respectfully requests reversal. For purposes of the remainder of the arguments with respect to claim 8, Appellant will assume that the Examiner did not rely upon this factual finding in reaching the Examiner’s conclusion of obviousness.

*C. THE EXAMINER ERRED BY FAILING TO PROPERLY ASCERTAIN THE DIFFERENCES BETWEEN THE INVENTION OF CLAIM 8 AND THE PRIOR ART.*

In support of the rejection of Appellant’s claim 8, the Examiner appears to have relied upon two different combinations of references. The Examiner’s first combination of references is the Examiner’s proposed combination of Rueter in view of Hatlestad et al.<sup>34</sup> The Examiner’s second combination of references includes the Examiner’s first combination of references in view of Duffin et al.

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<sup>33</sup> Final Office Action, page 3, paragraph 4, lines 1–4.

<sup>34</sup> Final Office Action, page 4, line 4 (“Rueter in view of Hatlestad does not teach . . .”).

With respect to the first combination of references, the Examiner indicated that the first combination does not teach “prioritizing events obtained from a plurality of medical devices implanted in different patients; and presenting a list of the patients and a list of the events for each of the patients based on the prioritization.”<sup>35</sup> However, the Examiner did not acknowledge that the Examiner’s first combination also does not teach “interrogating, with one or more remote monitors, a plurality of medical devices implanted in different patients to obtain event data; receiving, with a prioritization engine, the event data from the one or more remote monitors, wherein the event data describes a plurality of events that includes at least one of a therapy event and a diagnostic event, and wherein the prioritization engine is external to the patients, and assigning, with the prioritization engine, a relative importance to each of the events described by the received event data,” as recited in Appellant’s claim 8.

In order to establish a *prima facie* case of obviousness, the Examiner has the burden of explaining why the differences between the prior art and the claimed invention would have been obvious to a person of ordinary skill in the art at the time of Appellant’s invention. Such an explanation is essential to support an obviousness rejection. In order to give a sufficient explanation for a conclusion of obviousness, it is imperative that all of the differences between the claimed invention and the prior art be properly identified. The failure to identify all differences between the prior art and the claimed invention results in a rationale for obviousness that is insufficient to explain why the overlooked differences would have been obvious to a person of ordinary skill in the art at the time of Appellant’s invention.

As discussed above, the Examiner did not identify the following difference between the first combination of prior art and the invention of Appellant’s claim 8: the Examiner’s first combination does not teach “interrogating, with one or more remote monitors, a plurality of medical devices implanted in different patients to obtain event data; receiving, with a prioritization engine, the event data from the one or more remote monitors, wherein the event data describes a plurality of events that includes at least one of a therapy event and a diagnostic event, and wherein the prioritization engine is external to the patients, and assigning, with the prioritization engine, a relative importance to each of the events described by the received event data,” as recited in Appellant’s claim 8. This constitutes a difference between the Examiner’s proposed combination of prior art and the invention of Appellant’s claim 8 that must be taken

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<sup>35</sup> Final Office Action, page 4, lines 4–6.

into consideration by the Examiner. The Examiner appears to have overlooked this difference, and therefore, any rationale in support of the Examiner's conclusion of obvious fails to take into account this overlooked difference. For at least these reasons, Appellant respectfully requests reversal of the rejection to Appellant's claim 8.

*D. THE EXAMINER ERRED BY FAILING TO PROVIDE A RATIONALE SUFFICIENT TO EXPLAIN WHY THE DIFFERENCES BETWEEN RUETER IN VIEW OF HATLESTAD ET AL. AND APPELLANT'S CLAIM 8 WOULD HAVE BEEN OBVIOUS TO A PERSON OF ORDINARY SKILL IN THE ART AT THE TIME OF APPELLANT'S INVENTION.*

In support of the rejection of Appellant's claim 8, the Examiner appears to have relied upon two different combinations of prior art. The Examiner's first combination of references is the Examiner's proposed combination of Rueter in view of Hatlestad et al.<sup>36</sup> The second combination of prior art is the Examiner's proposed combination of the first combination of references in view of Duffin et al.<sup>37</sup>

As discussed in the previous section, the first combination of prior art, i.e., Rueter in view of Hatlestad et al., fails to teach "interrogating, with one or more remote monitors, a plurality of medical devices implanted in different patients to obtain event data; receiving, with a prioritization engine, the event data from the one or more remote monitors, wherein the event data describes a plurality of events that includes at least one of a therapy event and a diagnostic event, and wherein the prioritization engine is external to the patients, and assigning, with the prioritization engine, a relative importance to each of the events described by the received event data" as recited in Appellant's claim 8. The failure of Rueter in view of Hatlestad et al. to teach these features of Appellant's claim 8 constitutes a difference between Appellant's claim 8 and the prior art.

However, Duffin et al. also fails to disclose all of the missing features identified above with respect to the Examiner's first combination of prior art. Consequently, the Examiner's second combination of prior art, which includes the Examiner's first combination of prior art and

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<sup>36</sup> Final Office Action, page 4, line 4 ("Rueter in view of Hatlestad does not teach . . .").

<sup>37</sup> Final Office Action, page 4, lines 9–12 ("One of ordinary skill in the art at the time of invention would have found it obvious to combine . . . Rueter . . . Hatlestad . . . and . . . Duffin").

Duffin et al., does not include all of the features recited in Appellant's claim 8. These features constitute differences between the invention of Appellant's claim 8 and the prior art of record which must be taken into consideration by the Examiner. Because the Examiner's second combination of prior art does not take into account such differences, the Examiner's explanation of why the second combination of prior art would have been obvious to one of ordinary skill in the art at the time of the invention is not sufficient to explain why the differences between Appellant's claim 8 and the prior art would have been obvious to one of ordinary skill in the art at the time of Appellant's invention. For at least these reasons, Appellant respectfully requests reversal of the rejection to Appellant's claim 8.

*E. THE EXAMINER ERRED BY FAILING TO PROPERLY DETERMINE THE SCOPE AND CONTENT OF THE PRIOR ART.*

The factual findings relied upon by the Examiner in support of a rejection must be supported by a preponderance of the evidence on record.<sup>38</sup> In the instant case, the Examiner relied upon one or more of the factual findings with regard to the scope and content of the prior art that are not supported by the evidence on record. Because such factual findings are not supported by the evidence on record, the Examiner's determination of the scope and content of the prior art is not correct.

If the scope and content of the prior art is not properly determined, differences between the prior art and Appellant's claimed invention may be overlooked, which may in turn result in an explanation of obviousness that is insufficient to explain why the overlooked differences would have been obvious to a person of ordinary skill in the art at the time of Appellant's invention. Thus, if the evidentiary record does not support the Examiner's factual findings regarding the scope and content of the prior art, any obviousness rejection based upon such factual findings cannot be sustained.

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<sup>38</sup> MPEP § 2142; *Ex parte Frye*, Appeal 2009-006013, pg. 4 (Board of Patent Appeals and Interferences, *precedential opinion*, 2010) (citing *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (stating that "a preponderance of the evidence must show nonpatentability before the PTO may reject the claims of a patent application.")).

In support of the rejection of Appellant's claim 8, the Examiner asserted that "Hatlestad teaches the prioritization engine to be external."<sup>39</sup> The Examiner did not indicate whether or not the alleged prioritization engine in Hatlestad et al. corresponds to the "prioritization engine" recited in Appellant's claim 8. If the Examiner is of the position that the alleged prioritization engine in Hatlestad et al. can be interpreted as the "prioritization engine" recited in Appellant's claim 8, then the Examiner erred in determining the scope and content of the prior art.

More specifically, the "prioritization engine" recited in claim 8 relates back to the "receiving, with a prioritization engine, the event data from the one or more remote monitors" limitation of claim 8. The "event data" relate back to the limitation of claim 8 that recites "interrogating, with one or more remote monitors, a plurality of medical devices implanted in different patients to obtain event data." The "prioritization engine" recited in claim 8 also relates back to the "assigning, with the prioritization engine, a relative importance to each of the events described by the received event data" limitation of claim 8. When alleging that Hatlestad et al. teaches a prioritization engine, the Examiner appears to be referring to the wellness monitoring device (WMD) described in Hatlestad et al. However, the WMD in Hatlestad et al. does not receive events from one or more remote monitors that interrogate a plurality of medical devices implanted in different patients to obtain event data, much less assign a relative importance to each of such events. In fact, the Examiner already acknowledged that Rueter in view of Hatlestad does not teach "prioritizing events obtained from a plurality of medical devices implanted in different patients."<sup>40</sup> Therefore, the alleged "prioritization engine" identified by the Examiner in Hatlestad et al. cannot be reasonably interpreted as the "prioritization engine" recited in Appellant's claim 8.

Because the Examiner's alleged prioritization engine in Hatlestad et al. cannot be reasonably interpreted as the "prioritization engine" recited in Appellant's claim 8, any allegation that the alleged prioritization engine in Hatlestad et al. is external to the patient does not disclose that the "prioritization engine" of Appellant's claim 8 is "external to the patients." Accordingly, the evidence on record fails to support the Examiner's factual finding that Rueter discloses "the prioritization engine [of claim 8] to be external [to the patients]," as suggested by

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<sup>39</sup> Final Office Action dated October 12, 2010, page 3, paragraph 4, lines 8-9.

<sup>40</sup> Final Office Action, page 4, lines 4-6.



the Examiner. For at least these reasons, Appellant respectfully requests reversal of the rejection of claim 8.

Appellant notes that the argument described above applies if the Examiner is of the position that the alleged prioritization engine in Hatlestad et al. can be interpreted as the “prioritization engine” recited in Appellant’s claim 8. If the Examiner is of the position that the alleged prioritization engine in Hatlestad et al. cannot be interpreted as the “prioritization engine” recited in Appellant’s claim 8, then Appellant respectfully requests clarification in the Reply Brief.

*F. THE EXAMINER ERRED BY PROVIDING A RATIONALE IN THE ADVISORY ACTION THAT IS NOT SUPPORTED BY THE FACTUAL FINDINGS WHICH ARE NECESSARY FOR THE USE OF SUCH A RATIONALE.*

In the Advisory Action dated December 22, 2010, the Examiner stated that “[t]he well know elements described are merely a combination of old elements, and in the combination, each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.” The rationale provided by the Examiner in the Advisory Action appears to be the “Combining Prior Art Elements According to Known Methods to Yield Predictable Results” rationale outlined in Section 2143 of the Manual of Patent Examining Procedure (MPEP).

According to the MPEP, in order to reject a claim based on such a rationale, the Examiner “must articulate the following: (1) a finding that the prior art included each element claimed, although not necessarily in a single prior art reference, with the only difference between the claimed invention and the prior art being the lack of actual combination of the elements in a single prior art reference; (2) a finding that one of ordinary skill in the art could have combined the elements as claimed by known methods, and that in combination, each element merely performs the same function as it does separately; (3) a finding that one of ordinary skill in the art would have recognized that the results of the combination were predictable; and (4) whatever additional findings based on the Graham factual inquiries may be necessary, in view of the facts of the case under consideration, to explain a conclusion of obviousness.”<sup>41</sup>

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<sup>41</sup> MPEP § 2143.

The evidence on record, however, fails to support a factual finding that one of ordinary skill in the art could have combined the elements as claimed by known methods, and that in combination, each element merely performs the same function as it does separately. As already discussed above, the prior art fails to disclose all of the elements of Appellant's claim 8. As such, it is not possible to make a finding that each element merely performs the same function as it does separately. Accordingly, to the extent that the Examiner's rejection relies upon the rationale asserted in the Advisory Action dated December 22, 2010, Appellant requests reversal of the rejection.

G. *THE EXAMINER HAS FAILED TO ESTABLISH A PRIMA FACIE CASE OF OBVIOUSNESS WITH RESPECT TO THE SECOND GROUP OF CLAIMS.*

As discussed in detail in the previous sections, the Examiner erred by: (1) failing to properly determine the scope and content of the prior art; (2) failing to properly ascertain the differences between the invention of claim 8 and the prior art; and (3) failing to provide a rationale sufficient to explain why the differences between Rueter in view of Hatlestad et al. and Appellant's claim 8 would have been obvious to a person of ordinary skill in the art at the time of Appellant's invention. Accordingly, the Examiner has failed to establish a *prima facie* case of obviousness with respect to Appellant's claim 8.

Claims 9–11, 13 and 16 are each dependent upon independent claim 8 and incorporate all of the limitations of independent claim 8. In support of the rejection of these claims, the Examiner relied upon the same rationale as that which was used to support the rejection of Appellant's claim 8. Accordingly, the Examiner has failed to establish a *prima facie* case of obviousness with respect to claims 9–11, 13 and 16 for at least the reasons described above with respect to independent claim 8. In light of the deficiencies described above with respect to the Examiner's rejection of independent claim 8, Appellant reserves further comments concerning the rejection of the dependent claims, but neither admits nor acquiesces in the propriety of the Examiner's interpretation of, or application of art to, such claims.

For at least these reasons, the Examiner has failed to establish a *prima facie* case of obviousness with respect to claims 8–11, 13 and 16. Because the Examiner has failed to establish a *prima facie* case of obviousness, the burden has not shifted to the Appellant to rebut

such a rejection. In other words, Appellant cannot be expected to respond to such a rejection until the Examiner provides the requisite analysis and evidence necessary to properly support a *prima facie* case of obviousness. Accordingly, Appellant respectfully requests reversal of the rejection of these claims under 35 U.S.C. § 103(a).

**GROUP 3 – (Claims 17–19, 22, 24, 25, 28 and 47)**

Claims 17–19, 22, 24, 25, 28 and 47 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Rueter (U.S. Patent No. 5,944,745) in view of Hatlestad et al. (U.S. Patent Publ. No. 2004/0122294) and Duffin et al (U.S. Patent No. 6,292,698). Appellant respectfully traverses the rejection.

The Examiner bears the initial burden of factually supporting any *prima facie* case of obviousness under 35 U.S.C. § 103(a). In order to establish a *prima facie* case of obviousness, the Examiner must (1) determine the scope and content of the prior art; (2) ascertain the differences between the claimed invention and the prior art; and (3) resolve the level of ordinary skill in the art. After these factual inquiries have been properly resolved, the Examiner must then explain why the differences between the prior art and the claimed invention would have been obvious to a person of ordinary skill in the art at the time of Appellant's invention.<sup>42</sup>

The Examiner bears the burden of producing a preponderance of the evidence in support of all factual findings relied upon in support of a conclusion of obviousness.<sup>43</sup> If the Examiner is unable to provide sufficient evidence in support of the Examiner's factual findings, then any obviousness rejection based upon such factual findings should be reversed.

Appellant respectfully submits that the Examiner erred by: (1) failing to properly determine the scope and content of the prior art; (2) failing to properly ascertain the differences between the invention of claim 17 and the prior art; and (3) failing to provide a rationale sufficient to explain why the differences between Rueter in view of Hatlestad et al. and Appellant's claim 17 would have been obvious to a person of ordinary skill in the art at the time of Appellant's invention. Accordingly, the Examiner has failed to establish a *prima facie* case of obviousness with respect to Appellant's claim 17.

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<sup>42</sup> Manual of Patent Examining Procedure (MPEP) § 2141; *Graham v. John Deere Co.*, 383 U.S. 1 (1966).

<sup>43</sup> MPEP § 2142; *Ex parte Frye*, Appeal 2009-006013, pg. 4 (Board of Patent Appeals and Interferences, *precedential opinion*, 2010) (citing *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (stating that "a preponderance of the evidence must show nonpatentability before the PTO may reject the claims of a patent application.")).

Because the Examiner has failed to establish a *prima facie* case of obviousness with respect to claim 17, the burden has not shifted to the Appellant to rebut such a rejection. In other words, Appellant cannot be expected to respond to such a rejection until the Examiner provides the requisite analysis and evidence necessary to properly support a *prima facie* case of obviousness. Accordingly, Appellant respectfully requests reversal of the rejection of these claims under 35 U.S.C. § 103(a).

A. *RUETER IN VIEW OF HATLESTAD ET AL. AND DUFFIN ET AL. FAILS TO DISCLOSE OR SUGGEST ALL OF THE LIMITATIONS RECITED IN APPELLANT'S CLAIM 17.*

Appellant's claim 17 recites a system comprising a prioritization engine to receive events from one or more remote monitors, and to prioritize the received events, wherein the one or more remote monitors obtain the events from interrogation of a plurality of medical devices implanted within different patients, wherein the events include therapy events and diagnostic events, and wherein the prioritization engine and the one or more remote monitors are both external to the patients, and a user interface device to present a list of the patients and a list of the events for each of the patients based on the prioritization.

The applied references fail to disclose or suggest all of the requirements of Appellant's claim 17. As one example, the applied references fail to disclose or suggest "*a prioritization engine to receive events from one or more remote monitors, and to prioritize the received events, wherein the one or more remote monitors obtain the events from interrogation of a plurality of medical devices implanted within different patients, wherein the events include therapy events and diagnostic events, and wherein the prioritization engine and the one or more remote monitors are both external to the patients,*" as recited in Appellant's claim 17. As another example, the applied references fail to disclose or suggest "*a user interface device to present a list of the patients and a list of the events for each of the patients based on the prioritization,*" as also recited in Appellant's claim 17.

More specifically, each of the applied references fails to disclose "*a prioritization engine to receive events from one or more remote monitors, and to prioritize the received events, wherein the one or more remote monitors obtain the events from interrogation of a plurality of*

medical devices implanted within different patients, wherein the events include therapy events and diagnostic events, and wherein the prioritization engine and the one or more remote monitors are both external to the patients, and a user interface device to present a list of the patients and a list of the events for each of the patients based on the prioritization,” as recited in Appellant’s claim 17. Moreover, the applied references fail to provide any suggestion that would have rendered it obvious to one of ordinary skill in the art, at the time of Appellant’s invention, to arrive at the invention defined by Appellant’s claim 17. Accordingly, Appellant respectfully requests reversal of the rejection of Appellant’s claim 17.

*B. THE EXAMINER ERRED BY PRESENTING A FACTUAL FINDING THAT IS UNINTELLIGIBLE.*

In support of the rejection of Appellant’s claim 17, the Examiner asserted the same unintelligible factual finding that was already discussed above with respect to claim 17. More specifically, the Examiner asserted that “Rueter teaches a method comprising . . . and with the prioritization engine, the received events.”<sup>44</sup> To the extent that the Examiner’s conclusion of obviousness with respect to claim 17 relies upon the factual finding that “Rueter teaches a method comprising . . . and with the prioritization engine, the received events,” Appellant respectfully requests reversal. For purposes of the remainder of the arguments with respect to claim 17, Appellant will assume that the Examiner did not rely upon this factual finding in reaching the Examiner’s conclusion of obviousness.

*C. THE EXAMINER ERRED BY FAILING TO PROPERLY ASCERTAIN THE DIFFERENCES BETWEEN THE INVENTION OF CLAIM 17 AND THE PRIOR ART.*

In support of the rejection of Appellant’s claim 17, the Examiner appears to have relied upon two different combinations of references. The Examiner’s first combination of references is the Examiner’s proposed combination of Rueter in view of Hatlestad et al.<sup>45</sup> The Examiner’s

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<sup>44</sup> Final Office Action, page 3, paragraph 4, lines 1–4.

<sup>45</sup> Final Office Action, page 4, line 4 (“Rueter in view of Hatlestad does not teach . . .”).

second combination of references includes the Examiner's first combination of references in view of Duffin et al.<sup>46</sup>

With respect to the first combination of references, the Examiner indicated that the first combination does not teach "prioritizing events obtained from a plurality of medical devices implanted in different patients; and presenting a list of the patients and a list of the events for each of the patients based on the prioritization."<sup>47</sup> However, the Examiner did not acknowledge that the Examiner's first combination also does not teach "a prioritization engine to receive events from one or more remote monitors, and to prioritize the received events, wherein the one or more remote monitors obtain the events from interrogation of a plurality of medical devices implanted within different patients, wherein the events include therapy events and diagnostic events, and wherein the prioritization engine and the one or more remote monitors are both external to the patients; and a user interface device to present a list of the patients and a list of the events for each of the patients based on the prioritization," as recited in Appellant's claim 17.

In order to establish a *prima facie* case of obviousness, the Examiner has the burden of explaining why the differences between the prior art and the claimed invention would have been obvious to a person of ordinary skill in the art at the time of Appellant's invention. Such an explanation is essential to support an obviousness rejection. In order to give a sufficient explanation for a conclusion of obviousness, it is imperative that all of the differences between the claimed invention and the prior art be properly identified. The failure to identify all differences between the prior art and the claimed invention results in a rationale for obviousness that is insufficient to explain why the overlooked differences would have been obvious to a person of ordinary skill in the art at the time of Appellant's invention.

As discussed above, the Examiner did not identify the following difference between the first combination and the invention of Appellant's claim 17: the Examiner's first combination does not teach "a prioritization engine to receive events from one or more remote monitors, and to prioritize the received events, wherein the one or more remote monitors obtain the events from interrogation of a plurality of medical devices implanted within different patients, wherein the events include therapy events and diagnostic events, and wherein the prioritization engine and the one or more remote monitors are both external to the patients; and a user interface device to

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<sup>46</sup> Final Office Action, page 4, lines 9–12 ("One of ordinary skill in the art at the time of invention would have found it obvious to combine . . . Rueter . . . Hatlestad . . . and . . . Duffin").

<sup>47</sup> Final Office Action, page 4, lines 4–6.

present a list of the patients and a list of the events for each of the patients based on the prioritization,” as recited in Appellant’s claim 17. This constitutes a difference between the Examiner’s proposed combination of prior art and the invention of Appellant’s claim 17 that must be taken into consideration by the Examiner. The Examiner appears to have overlooked this difference, and therefore, any rationale in support of the Examiner’s conclusion of obvious fails to take into account this overlooked difference. For at least these reasons, Appellant respectfully requests reversal of the rejection to Appellant’s claim 17.

*D. THE EXAMINER ERRED BY FAILING TO PROVIDE A RATIONALE SUFFICIENT TO EXPLAIN WHY THE DIFFERENCES BETWEEN RUETER IN VIEW OF HATLESTAD ET AL. AND APPELLANT’S CLAIM 17 WOULD HAVE BEEN OBVIOUS TO A PERSON OF ORDINARY SKILL IN THE ART AT THE TIME OF APPELLANT’S INVENTION.*

In support of the rejection of Appellant’s claim 17, the Examiner appears to have relied upon two different combinations of prior art. The Examiner’s first combination of references is the Examiner’s proposed combination of Rueter in view of Hatlestad et al.<sup>48</sup> The second combination of prior art is the Examiner’s proposed combination of the first combination of references in view of Duffin et al.<sup>49</sup>

As discussed in the previous section, the first combination of prior art, i.e., Rueter in view of Hatlestad et al., fails to teach “a prioritization engine to receive events from one or more remote monitors, and to prioritize the received events, wherein the one or more remote monitors obtain the events from interrogation of a plurality of medical devices implanted within different patients, wherein the events include therapy events and diagnostic events, and wherein the prioritization engine and the one or more remote monitors are both external to the patients; and a user interface device to present a list of the patients and a list of the events for each of the patients based on the prioritization,” as recited in Appellant’s claim 17. The failure of Rueter in view of Hatlestad et al. to teach these features of Appellant’s claim 17 constitutes a difference between Appellant’s claim 17 and the prior art.

<sup>48</sup> Final Office Action, page 4, line 4 (“Rueter in view of Hatlestad does not teach . . .”).

<sup>49</sup> Final Office Action, page 4, lines 9–12 (“One of ordinary skill in the art at the time of invention would have found it obvious to combine . . . Rueter . . . Hatlestad . . . and . . . Duffin”).

However, Duffin et al. also fails to disclose all of the missing features identified above with respect to the Examiner's first combination of prior art. Consequently, the Examiner's second combination of prior art, which includes the Examiner's first combination of prior art and Duffin et al., does not include all of the features recited in Appellant's claim 17. These features constitute differences between the invention of Appellant's claim 17 and the prior art of record which must be taken into consideration by the Examiner. Because the Examiner's second combination of prior art does not take into account such differences, the Examiner's explanation of why the second combination of prior art would have been obvious to one of ordinary skill in the art at the time of the invention is not sufficient to explain why the differences between Appellant's claim 17 and the prior art would have been obvious to one of ordinary skill in the art at the time of Appellant's invention. For at least these reasons, Appellant respectfully requests reversal of the rejection to Appellant's claim 17.

*E. THE EXAMINER ERRED BY FAILING TO PROPERLY DETERMINE THE SCOPE AND CONTENT OF THE PRIOR ART.*

The factual findings relied upon by the Examiner in support of a rejection must be supported by a preponderance of the evidence on record.<sup>50</sup> In the instant case, the Examiner relied upon one or more of the factual findings with regard to the scope and content of the prior art that are not supported by the evidence on record. Because such factual findings are not supported by the evidence on record, the Examiner's determination of the scope and content of the prior art is not correct.

If the scope and content of the prior art is not properly determined, differences between the prior art and Appellant's claimed invention may be overlooked, which may in turn result in an explanation of obviousness that is insufficient to explain why the overlooked differences would have been obvious to a person of ordinary skill in the art at the time of Appellant's invention. Thus, if the evidentiary record does not support the Examiner's factual findings

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<sup>50</sup> MPEP § 2142; *Ex parte Frye*, Appeal 2009-006013, pg. 4 (Board of Patent Appeals and Interferences, *precedential opinion*, 2010) (citing *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (stating that "a preponderance of the evidence must show nonpatentability before the PTO may reject the claims of a patent application.")).



regarding the scope and content of the prior art, any obviousness rejection based upon such factual findings cannot be sustained.

In support of the rejection of Appellant's claim 17, the Examiner asserted that "Rueter teaches presenting, with a user interface device, a list of the events based on the prioritization."<sup>51</sup> The Examiner did not indicate whether or not the alleged prioritization in Rueter corresponds to the "prioritization" recited in Appellant's claim 17. If the Examiner is of the position that the alleged prioritization in Rueter can be interpreted as the "prioritization" performed by the "prioritization engine" recited in Appellant's claim 17, then the Examiner erred in determining the scope and content of the prior art.

More specifically, Appellant's claim 17 recites "a prioritization engine to receive events from one or more remote monitors, and to prioritize the received events." The Examiner already acknowledged that Rueter does not teach "receiving events from a remote monitor."<sup>52</sup> Thus, Rueter does not disclose "a prioritization engine to receive events from one or more remote monitors," as recited in Appellant's claim 17. Consequently, Rueter also does not disclose "a prioritization engine . . . to prioritize the received events," as recited in Appellant's claim 17 (emphasis added). Therefore, any alleged "prioritization" identified by the Examiner in Rueter cannot be reasonably interpreted as the "prioritization" performed by the "prioritization engine" recited in Appellant's claim 17. Accordingly, the evidence on record fails to support the Examiner's factual finding that Rueter discloses "presenting, with a user interface device, a list of the events based on the prioritization [performed by the prioritization engine defined by Appellant's claim 17]." For at least these reasons, Appellant respectfully requests reversal of the rejection of claim 17.

Appellant notes that the argument described above applies if the Examiner is of the position that the alleged prioritization in Rueter can be interpreted as the "prioritization" performed by the "prioritization engine" recited in Appellant's claim 17. If the Examiner is of the position that the alleged prioritization in Rueter cannot be interpreted as the "prioritization" performed by the "prioritization engine" recited in Appellant's claim 17, then Appellant respectfully requests clarification in the Reply Brief.

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<sup>51</sup> Final Office Action dated October 12, 2010, page 3, paragraph 4, lines 1-5.

<sup>52</sup> Final Office Action dated October 12, 2010, page 3, paragraph 4, lines 7-8.

Also in support of the rejection of Appellant's claim 17, the Examiner asserted that "Hatlestad teaches the prioritization engine to be external."<sup>53</sup> The Examiner did not indicate whether or not the alleged prioritization engine in Hatlestad et al. corresponds to the "prioritization engine" recited in Appellant's claim 17. If the Examiner is of the position that the alleged prioritization engine in Hatlestad et al. can be interpreted as the "prioritization engine" recited in Appellant's claim 17, then the Examiner erred in determining the scope and content of the prior art.

More specifically, the "prioritization engine" recited in claim 17 is configured to "receive events from one or more remote monitors, and to prioritize the received events, wherein the one or more remote monitors obtain the events from interrogation of a plurality of medical devices implanted within different patients, wherein the events include therapy events and diagnostic events." When alleging that Hatlestad et al. teaches a prioritization engine, the Examiner appears to be referring to the wellness monitoring device (WMD) described in Hatlestad et al. However, the WMD in Hatlestad et al. does not receive events from one or more remote monitors that obtain the events from interrogation of a plurality of medical devices implanted within different patients, much less prioritize such events. In fact, the Examiner already acknowledged that Rueter in view of Hatlestad does not teach "prioritizing events obtained from a plurality of medical devices implanted in different patients."<sup>54</sup> Therefore, the alleged "prioritization engine" identified by the Examiner in Hatlestad et al. cannot be reasonably interpreted as the "prioritization engine" recited in Appellant's claim 17.

Because the Examiner's alleged prioritization engine in Hatlestad et al. cannot be reasonably interpreted as the "prioritization engine" recited in Appellant's claim 17, any allegation that the alleged prioritization engine in Hatlestad et al. is external to the patient does not disclose that the "prioritization engine" of Appellant's claim 17 is "external to the patients." Accordingly, the evidence on record fails to support the Examiner's factual finding that Rueter discloses "the prioritization engine [of claim 17] to be external [to the patients]," as suggested by the Examiner. For at least these reasons, Appellant respectfully requests reversal of the rejection of claim 17.

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<sup>53</sup> Final Office Action dated October 12, 2010, page 3, paragraph 4, lines 8-9.

<sup>54</sup> Final Office Action, page 4, lines 4-6.

Appellant notes that the argument described above applies if the Examiner is of the position that the alleged prioritization engine in Hatlestad et al. can be interpreted as the “prioritization engine” recited in Appellant’s claim 17. If the Examiner is of the position that the alleged prioritization engine in Hatlestad et al. cannot be interpreted as the “prioritization engine” recited in Appellant’s claim 17, then Appellant respectfully requests clarification in the Reply Brief.

*F. THE EXAMINER ERRED BY PROVIDING A RATIONALE IN THE ADVISORY ACTION THAT IS NOT SUPPORTED BY THE FACTUAL FINDINGS WHICH ARE NECESSARY FOR THE USE OF SUCH A RATIONALE.*

In the Advisory Action dated December 22, 2010, the Examiner stated that “[t]he well know elements described are merely a combination of old elements, and in the combination, each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.” The rationale provided by the Examiner in the Advisory Action appears to be the “Combining Prior Art Elements According to Known Methods to Yield Predictable Results” rationale outlined in Section 2143 of the Manual of Patent Examining Procedure (MPEP).

According to the MPEP, in order to reject a claim based on such a rationale, the Examiner “must articulate the following: (1) a finding that the prior art included each element claimed, although not necessarily in a single prior art reference, with the only difference between the claimed invention and the prior art being the lack of actual combination of the elements in a single prior art reference; (2) a finding that one of ordinary skill in the art could have combined the elements as claimed by known methods, and that in combination, each element merely performs the same function as it does separately; (3) a finding that one of ordinary skill in the art would have recognized that the results of the combination were predictable; and (4) whatever additional findings based on the Graham factual inquiries may be necessary, in view of the facts of the case under consideration, to explain a conclusion of obviousness.”<sup>55</sup>

The Examiner, however, has failed to articulate one or more of the factual findings needed to reject Appellant’s claim 17 based on such a rationale. For example, the Examiner

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<sup>55</sup> MPEP § 2143.

failed to articulate that the prior art included each element claimed, although not necessarily in a single prior art reference, with the only difference between the claimed invention and the prior art being the lack of actual combination of the elements in a single prior art reference.

Moreover, the evidence on record fails to support such a factual finding. For example, the prior art fails to disclose “a prioritization engine to receive events from one or more remote monitors, and to prioritize the received events, wherein the one or more remote monitors obtain the events from interrogation of a plurality of medical devices implanted within different patients, wherein the events include therapy events and diagnostic events, and wherein the prioritization engine and the one or more remote monitors are both external to the patients,” as recited in Appellant’s claim 17. Moreover, the prior art also fails to disclose “a user interface device to present a list of the patients and a list of the events for each of the patients based on the prioritization,” as recited in Appellant’s claim 17. In addition, as already discussed in the previous sections, other differences exist between Appellant’s claim 17 and the prior art besides the lack of actual combination of the elements in a single prior art reference. Accordingly, to the extent that the Examiner’s rejection relies upon the rationale asserted in the Advisory Action dated December 22, 2010, Appellant respectfully requests reversal of the rejection.

In addition, the evidence on record fails to support a factual finding that one of ordinary skill in the art could have combined the elements as claimed by known methods, and that in combination, each element merely performs the same function as it does separately. As already discussed above, the prior art fails to disclose all of the elements of Appellant’s claim 17. As such, it is not possible to make a finding that each element merely performs the same function as it does separately. Accordingly, to the extent that the Examiner’s rejection relies upon the rationale asserted in the Advisory Action dated December 22, 2010, Appellant respectfully requests reversal of the rejection.

*G. THE EXAMINER HAS FAILED TO ESTABLISH A PRIMA FACIE CASE OF  
OBVIOUSNESS WITH RESPECT TO THE THIRD GROUP OF CLAIMS.*

As discussed in detail in the previous sections, the Examiner erred by: (1) failing to properly determine the scope and content of the prior art; (2) failing to properly ascertain the differences between the invention of claim 17 and the prior art; and (3) failing to provide a

rationale sufficient to explain why the differences between Rueter in view of Hatlestad et al. and Appellant's claim 17 would have been obvious to a person of ordinary skill in the art at the time of Appellant's invention. Accordingly, the Examiner has failed to establish a *prima facie* case of obviousness with respect to Appellant's claim 17.

Claims 18, 19, 22, 24, 25, 28 and 47 are each dependent upon independent claim 17 and incorporate all of the limitations of independent claim 17. In support of the rejection of these claims, the Examiner relied upon the same rationale as that which was used to support the rejection of Appellant's claim 17. Accordingly, the Examiner has failed to establish a *prima facie* case of obviousness with respect to claims 18, 19, 22, 24, 25, 28 and 47 for at least the reasons described above with respect to independent claim 17. In light of the deficiencies described above with respect to the Examiner's rejection of independent claim 17, Appellant reserves further comments concerning the rejection of the dependent claims, but neither admits nor acquiesces in the propriety of the Examiner's interpretation of, or application of art to, such claims.

For at least these reasons, the Examiner has failed to establish a *prima facie* case of obviousness with respect to claims 17–19, 22, 24, 25, 28 and 47. Because the Examiner has failed to establish a *prima facie* case of obviousness, the burden has not shifted to the Appellant to rebut such a rejection. In other words, Appellant cannot be expected to respond to such a rejection until the Examiner provides the requisite analysis and evidence necessary to properly support a *prima facie* case of obviousness. Accordingly, Appellant respectfully requests reversal of the rejection of these claims under 35 U.S.C. § 103(a).

#### ***GROUP 4 – (Claims 29, 31 and 32)***

Claims 29, 31 and 32 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over (U.S. Patent No. 5,944,745) in view of Hatlestad et al. (U.S. Patent Publ. No. 2004/0122294) and Duffin et al (U.S. Patent No. 6,292,698). Appellant respectfully traverses the rejection.

The Examiner bears the initial burden of factually supporting any *prima facie* case of obviousness under 35 U.S.C. § 103(a). In order to establish a *prima facie* case of obviousness, the Examiner must (1) determine the scope and content of the prior art; (2) ascertain the differences between the claimed invention and the prior art; and (3) resolve the level of ordinary

skill in the art. After these factual inquiries have been properly resolved, the Examiner must then explain why the differences between the prior art and the claimed invention would have been obvious to a person of ordinary skill in the art at the time of Appellant's invention.<sup>56</sup>

The Examiner bears the burden of producing a preponderance of the evidence in support of all factual findings relied upon in support of a conclusion of obviousness.<sup>57</sup> If the Examiner is unable to provide sufficient evidence in support of the Examiner's factual findings, then any obviousness rejection based upon such factual findings should be reversed.

Appellant respectfully submits that the Examiner erred by: (1) failing to properly determine the scope and content of the prior art; (2) failing to properly ascertain the differences between the invention of claim 29 and the prior art; and (3) failing to provide a rationale sufficient to explain why the differences acknowledged by the Examiner between Rueter in view of Hatlestad et al. and Appellant's claim 29 would have been obvious to a person of ordinary skill in the art at the time of Appellant's invention. Accordingly, the Examiner has failed to establish a *prima facie* case of obviousness with respect to Appellant's claim 29.

Because the Examiner has failed to establish a *prima facie* case of obviousness with respect to claim 29, the burden has not shifted to the Appellant to rebut such a rejection. In other words, Appellant cannot be expected to respond to such a rejection until the Examiner provides the requisite analysis and evidence necessary to properly support a *prima facie* case of obviousness. Accordingly, Appellant respectfully requests reversal of the rejection of these claims under 35 U.S.C. § 103(a).

A. *RUETER IN VIEW OF HATLESTAD ET AL. AND DUFFIN ET AL. FAILS TO DISCLOSE OR SUGGEST ALL OF THE LIMITATIONS RECITED IN APPELLANT'S CLAIM 29.*

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<sup>56</sup> Manual of Patent Examining Procedure (MPEP) § 2141; *Graham v. John Deere Co.*, 383 U.S. 1 (1966).

<sup>57</sup> MPEP § 2142; *Ex parte Frye*, Appeal 2009-006013, pg. 4 (Board of Patent Appeals and Interferences, *precedential opinion*, 2010) (citing *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (stating that "a preponderance of the evidence must show nonpatentability before the PTO may reject the claims of a patent application.")).

Appellant's claim 29 recites a computer-readable medium comprising instructions for causing a programmable processor to receive events from a plurality of remote monitors, wherein each of the remote monitors obtains the events from interrogation of a medical device implanted within a different patient, wherein the events include therapy events and diagnostic events, and wherein the programmable processor and the remote monitors are both external to the patients. The computer-readable medium further comprises instructions for causing a programmable processor to prioritize the received events, and present a list of the patients and a list of the events for each of the patients based on the prioritization.

The applied references fail to disclose or suggest all of the requirements of Appellant's claim 29. As one example, the applied references fail to disclose or suggest "*instructions for causing a programmable processor to . . . prioritize the received events; and present a list of the patients and a list of the events for each of the patients based on the prioritization,*" as recited in Appellant's claim 29.

More specifically, each of the applied references fails to disclose "instructions for causing a programmable processor to . . . prioritize the received events; and present a list of the patients and a list of the events for each of the patients based on the prioritization," as recited in Appellant's claim 29. Moreover, the applied references fail to provide any suggestion that would have rendered it obvious to one of ordinary skill in the art, at the time of Appellant's invention, to arrive at the invention defined by Appellant's claim 29. Accordingly, Appellant respectfully requests reversal of the rejection of Appellant's claim 29.

*B. THE EXAMINER ERRED BY PRESENTING A FACTUAL FINDING THAT IS UNINTELLIGIBLE.*

In support of the rejection of Appellant's claim 29, the Examiner asserted the same unintelligible factual finding that was already discussed above with respect to claim 1. More specifically, the Examiner asserted that "Rueter teaches a method comprising . . . and with the prioritization engine, the received events."<sup>58</sup> To the extent that the Examiner's conclusion of obviousness with respect to claim 29 relies upon the factual finding that "Rueter teaches a method comprising . . . and with the prioritization engine, the received events," Appellant

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<sup>58</sup> Final Office Action, page 3, paragraph 4, lines 1-4.

respectfully requests reconsideration. For purposes of the remainder of the arguments with respect to claim 29, Appellant will assume that the Examiner did not rely upon this factual finding in reaching the Examiner's conclusion of obviousness.

C. *THE EXAMINER ERRED BY FAILING TO PROPERLY ASCERTAIN THE DIFFERENCES BETWEEN THE INVENTION OF CLAIM 29 AND THE PRIOR ART.*

In support of the rejection of Appellant's claim 29, the Examiner appears to have relied upon two different combinations of references. The Examiner's first combination of references is the Examiner's proposed combination of Rueter in view of Hatlestad et al.<sup>59</sup> The Examiner's second combination of references includes the Examiner's first combination of references in view of Duffin et al.<sup>60</sup>

With respect to the first combination of references, the Examiner indicated that the first combination does not teach "prioritizing events obtained from a plurality of medical devices implanted in different patients; and presenting a list of the patients and a list of the events for each of the patients based on the prioritization."<sup>61</sup> However, the Examiner did not acknowledge that the Examiner's first combination also does not teach "instructions for causing a programmable processor to . . . receive events from a plurality of remote monitors, wherein each of the remote monitors obtains the events from interrogation of a medical device implanted within a different patient, wherein the events include therapy events and diagnostic events, and wherein the programmable processor and the remote monitors are both external to the patients," as recited in Appellant's claim 29.

In order to establish a *prima facie* case of obviousness, the Examiner has the burden of explaining why the differences between the prior art and the claimed invention would have been obvious to a person of ordinary skill in the art at the time of Appellant's invention. Such an explanation is essential to support an obviousness rejection. In order to give a sufficient explanation for a conclusion of obviousness, it is imperative that all of the differences between

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<sup>59</sup> Final Office Action, page 4, line 4 ("Rueter in view of Hatlestad does not teach . . .").

<sup>60</sup> Final Office Action, page 4, lines 9–12 ("One of ordinary skill in the art at the time of invention would have found it obvious to combine . . . Rueter . . . Hatlestad . . . and . . . Duffin").

<sup>61</sup> Final Office Action, page 4, lines 4–6.



the claimed invention and the prior art be properly identified. The failure to identify all differences between the prior art and the claimed invention results in a rationale for obviousness that is insufficient to explain why the overlooked differences would have been obvious to a person of ordinary skill in the art at the time of Appellant's invention.

As discussed above, the Examiner did not identify the following difference between the first combination and the invention of Appellant's claim 29: the Examiner's first combination does not teach "instructions for causing a programmable processor to . . . receive events from a plurality of remote monitors, wherein each of the remote monitors obtains the events from interrogation of a medical device implanted within a different patient, wherein the events include therapy events and diagnostic events, and wherein the programmable processor and the remote monitors are both external to the patients," as recited in Appellant's claim 29. This constitutes a difference between the Examiner's proposed combination of prior art and the invention of Appellant's claim 29 that must be taken into consideration by the Examiner. The Examiner appears to have overlooked this difference, and therefore, any rationale in support of the Examiner's conclusion of obvious fails to take into account this overlooked difference. For at least these reasons, Appellant respectfully requests reversal of the rejection to claim 29.

*D. THE EXAMINER ERRED BY FAILING TO PROVIDE A RATIONALE SUFFICIENT TO EXPLAIN WHY THE DIFFERENCES ACKNOWLEDGED BY THE EXAMINER BETWEEN RUETER IN VIEW OF HATLESTAD ET AL. AND APPELLANT'S CLAIM 1 WOULD HAVE BEEN OBVIOUS TO A PERSON OF ORDINARY SKILL IN THE ART AT THE TIME OF APPELLANT'S INVENTION.*

In support of the rejection of Appellant's claim 29, the Examiner appears to have relied upon two different combinations of prior art. The Examiner's first combination of references is the Examiner's proposed combination of Rueter in view of Hatlestad et al.<sup>62</sup> The second combination of prior art is the Examiner's proposed combination of the first combination of references in view of Duffin et al.<sup>63</sup>

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<sup>62</sup> Final Office Action, page 4, line 4 ("Rueter in view of Hatlestad does not teach . . .").

<sup>63</sup> Final Office Action, page 4, lines 9–12 ("One of ordinary skill in the art at the time of invention would have found it obvious to combine . . . Rueter . . . Hatlestad . . . and . . . Duffin").

The Examiner acknowledged that the Examiner's first combination of prior art, i.e., Rueter in view of Hatlestad et al., fails to teach "prioritizing events obtained from a plurality of medical devices implanted in different patients; and presenting a list of the patients and a list of the events for each of the patients based on the prioritization."<sup>64</sup> It follows that the Examiner's first combination of prior art also fails to teach "instructions for causing a programmable processor to . . . prioritize the received events; and present a list of the patients and a list of the events for each of the patients based on the prioritization," as recited in Appellant's claim 29. The failure of Rueter in view of Hatlestad et al. to teach these features of Appellant's claim 29 constitutes a difference between Appellant's claim 1 and the prior art.

In order to explain why this difference would have been obvious to a person of ordinary skill in the art, the Examiner turned to Duffin et al. The Examiner proposed a second combination of prior art, which includes the Examiner's first combination of prior art in view of Duffin et al., and attempted to give a rationale as to why the Examiner's second combination of prior art would have been obvious to one of ordinary skill in the art at the time of Appellant's invention. The Examiner's explanation, however, is not sufficient because the Examiner's second combination of prior art does not include the features already acknowledged by the Examiner to be missing from the Examiner's first combination of prior art.

More specifically, the Examiner's second combination of prior art does not include "instructions for causing a programmable processor to . . . prioritize the received events; and present a list of the patients and a list of the events for each of the patients based on the prioritization," as recited in Appellant's claim 29. As already discussed above, the Examiner acknowledged that Rueter in view of Hatlestad et al. fails to teach "instructions for causing a programmable processor to . . . prioritize the received events; and present a list of the patients and a list of the events for each of the patients based on the prioritization," as recited in Appellant's claim 29. Duffin et al. also fails to teach such features. The Examiner has not proposed to modify either of the Examiner's first combination of prior art or Duffin et al. to include such features. Therefore, the Examiner's second combination of prior art does not include the above-identified features.

In other words, if the teachings of a first set of references (i.e., Rueter in view Hatlestad et al.) and the teachings of a second set of references (i.e., Duffin et al.) each fail to disclose one

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<sup>64</sup> Final Office Action, page 4, lines 4-6.

or more features of Appellant's claim 29, then the combination of the teachings also cannot teach these features without at least one of the references being modified to include such features. The Examiner's proposed combination involves "combining the prioritization method taught by [Ructer] with the features of Hatlestad to and the telemetry system for implantable medical devices taught by Duffin." However, the Examiner's proposed combination mentions nothing about modifying any of the references to include "instructions for causing a programmable processor to . . . prioritize the received events; and present a list of the patients and a list of the events for each of the patients based on the prioritization," as recited in Appellant's claim 29. Because these features were not taught individually within the references, any combination of the references that does not involve a modification of the references cannot produce the invention defined by Appellant's claim 29.

Again, the Examiner's second combination of prior art does not include all of the features of Appellant's claim 29. These features constitute differences between the invention of Appellant's claim 29 and the prior art of record which must be taken into consideration by the Examiner. Because the Examiner's second combination of prior art does not take into account such differences, the Examiner's explanation of why the second combination of prior art would have been obvious to one of ordinary skill in the art at the time of the invention is not sufficient to explain why the differences between Appellant's claim 1 and the prior art would have been obvious to one of ordinary skill in the art at the time of Appellant's invention. For at least these reasons, Appellant respectfully requests reversal of the rejection to Appellant's claim 29.

*E. THE EXAMINER ERRED BY FAILING TO PROPERLY DETERMINE THE SCOPE AND CONTENT OF THE PRIOR ART.*

The factual findings relied upon by the Examiner in support of a rejection must be supported by a preponderance of the evidence on record.<sup>65</sup> In the instant case, the Examiner relied upon one or more of the factual findings with regard to the scope and content of the prior art that are not supported by the evidence on record. Because such factual findings are not

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<sup>65</sup> MPEP § 2142; *Ex parte Frye*, Appeal 2009-006013, pg. 4 (Board of Patent Appeals and Interferences, *precedential opinion*, 2010) (citing *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (stating that "a preponderance of the evidence must show nonpatentability before the PTO may reject the claims of a patent application.")).

supported by the evidence on record, the Examiner's determination of the scope and content of the prior art is not correct.

If the scope and content of the prior art is not properly determined, differences between the prior art and Appellant's claimed invention may be overlooked, which may in turn result in an explanation of obviousness that is insufficient to explain why the overlooked differences would have been obvious to a person of ordinary skill in the art at the time of Appellant's invention. Thus, if the evidentiary record does not support the Examiner's factual findings regarding the scope and content of the prior art, any obviousness rejection based upon such factual findings cannot be sustained.

In support of the rejection of Appellant's claim 29, the Examiner asserted that "Rueter teaches presenting, with a user interface device, a list of the events based on the prioritization."<sup>66</sup> The Examiner did not indicate whether or not the alleged prioritization in Rueter corresponds to the "prioritization" recited in Appellant's claim 29. If the Examiner is of the position that the alleged prioritization in Rueter can be interpreted as the "prioritization" recited in Appellant's claim 29, then the Examiner erred in determining the scope and content of the prior art.

More specifically, the "prioritization" recited in claim 29 relates back to the "prioritize the received events" feature of claim 29. The "received events" in claim 29 relate back to the events recited in the following limitation of claim 29: "receive events from a plurality of remote monitors." The Examiner already acknowledged that Rueter does not teach "receiving events from a remote monitor."<sup>67</sup> Thus, Rueter does not disclose the "received events" recited in Appellant's claim 29. Consequently, Rueter also does not disclose "instructions for causing a programmable processor to . . . prioritize the received events," as recited in Appellant's claim 29 (emphasis added). Therefore, any alleged "prioritization" identified by the Examiner in Rueter cannot be reasonably interpreted as the "prioritization" recited in Appellant's claim 29. Accordingly, the evidence on record fails to support the Examiner's factual finding that Rueter discloses "presenting, with a user interface device, a list of the events based on the prioritization [of Appellant's claim 29]." For at least these reasons, Appellant respectfully requests reversal of the rejection of claim 29.

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<sup>66</sup> Final Office Action dated October 12, 2010, page 3, paragraph 4, lines 1-5.

<sup>67</sup> Final Office Action dated October 12, 2010, page 3, paragraph 4, lines 7-8.

Appellant notes that the argument described above applies if the Examiner is of the position that the alleged prioritization in Rueter can be interpreted as the “prioritization” recited in Appellant’s claim 29. If the Examiner is of the position that the alleged prioritization in Rueter cannot be interpreted as the “prioritization” recited in Appellant’s claim 29, then Appellant respectfully requests clarification in the Reply Brief.

Also in support of the rejection of Appellant’s claim 29, the Examiner asserted that “Hatlestad teaches the prioritization engine to be external.”<sup>68</sup> The Examiner did not indicate whether or not the alleged prioritization engine in Hatlestad et al. corresponds to the “programmable processor” recited in Appellant’s claim 29. If the Examiner is of the position that the alleged prioritization engine in Hatlestad et al. can be interpreted as the “programmable processor” recited in Appellant’s claim 29, then the Examiner erred in determining the scope and content of the prior art.

More specifically, the “programmable processor” recited in claim 29 “receive[s] events from a plurality of remote monitors, wherein each of the remote monitors obtains the events from interrogation of a medical device implanted within a different patient.” The “programmable processor” recited in claim 29 also “prioritize[s] the received events.” When alleging that Hatlestad et al. teaches a prioritization engine, the Examiner appears to be referring to the wellness monitoring device (WMD) described in Hatlestad et al. However, the WMD in Hatlestad et al. does not receive events from a plurality of remote monitors that obtain the events from interrogation of a medical device implanted within a different patient, much less prioritize such events. In fact, the Examiner already acknowledged that Rueter in view of Hatlestad does not teach “prioritizing events obtained from a plurality of medical devices implanted in different patients.”<sup>69</sup> Therefore, the alleged “prioritization engine” identified by the Examiner in Hatlestad et al. cannot be reasonably interpreted as the “programmable processor” recited in Appellant’s claim 29.

Because the Examiner’s alleged prioritization engine in Hatlestad et al. cannot be reasonably interpreted as the “programmable processor” recited in Appellant’s claim 29, any allegation that the alleged prioritization engine in Hatlestad et al. is external to the patient does not disclose that “programmable processor” of Appellant’s claim 29 is “external to the patients.”

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<sup>68</sup> Final Office Action dated October 12, 2010, page 3, paragraph 4, lines 8–9.

<sup>69</sup> Final Office Action, page 4, lines 4–6.

Accordingly, the evidence on record fails to support the Examiner's factual finding that Rueter discloses "the prioritization engine [of claim 29] to be external [to the patients]," as suggested by the Examiner. For at least these reasons, Appellant respectfully requests reversal of the rejection of claim 29.

Appellant notes that the argument described above applies if the Examiner is of the position that the alleged prioritization engine in Hatlestad et al. can be interpreted as the "programmable processor" recited in Appellant's claim 29. If the Examiner is of the position that the alleged prioritization engine in Hatlestad et al. cannot be interpreted as the "programmable processor" recited in Appellant's claim 29, then Appellant respectfully requests clarification in the Reply Brief.

*F. THE EXAMINER ERRED BY PROVIDING A RATIONALE IN THE ADVISORY ACTION THAT IS NOT SUPPORTED BY THE FACTUAL FINDINGS WHICH ARE NECESSARY FOR THE USE OF SUCH A RATIONALE.*

In the Advisory Action dated December 22, 2010, the Examiner stated that "[t]he well know elements described are merely a combination of old elements, and in the combination, each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable." The rationale provided by the Examiner in the Advisory Action appears to be the "Combining Prior Art Elements According to Known Methods to Yield Predictable Results" rationale outlined in Section 2143 of the Manual of Patent Examining Procedure (MPEP).

According to the MPEP, in order to reject a claim based on such a rationale, the Examiner "must articulate the following: (1) a finding that the prior art included each element claimed, although not necessarily in a single prior art reference, with the only difference between the claimed invention and the prior art being the lack of actual combination of the elements in a single prior art reference; (2) a finding that one of ordinary skill in the art could have combined the elements as claimed by known methods, and that in combination, each element merely performs the same function as it does separately; (3) a finding that one of ordinary skill in the art would have recognized that the results of the combination were predictable; and (4) whatever

additional findings based on the Graham factual inquiries may be necessary, in view of the facts of the case under consideration, to explain a conclusion of obviousness.”<sup>70</sup>

The Examiner, however, has failed to articulate one or more of the factual findings needed to reject Appellant’s claim 29 based on such a rationale. For example, the Examiner failed to articulate that the prior art included each element claimed, although not necessarily in a single prior art reference, with the only difference between the claimed invention and the prior art being the lack of actual combination of the elements in a single prior art reference. Moreover, the evidence on record fails to support such a factual finding. For example, the prior art fails to disclose “instructions for causing a programmable processor to . . . present a list of the patients and a list of the events for each of the patients based on the prioritization,” as recited in Appellant’s claim 29. In addition, as already discussed in the previous sections, other differences exist between Appellant’s claim 29 and the prior art besides the lack of actual combination of the elements in a single prior art reference. Accordingly, to the extent that the Examiner’s rejection relies upon the rationale asserted in the Advisory Action dated December 22, 2010, Appellant respectfully requests reversal of the rejection.

In addition, the evidence on record fails to support a factual finding that one of ordinary skill in the art could have combined the elements as claimed by known methods, and that in combination, each element merely performs the same function as it does separately. As already discussed above, the prior art fails to disclose all of the elements of Appellant’s claim 29. As such, it is not possible to make a finding that each element merely performs the same function as it does separately. Accordingly, to the extent that the Examiner’s rejection relies upon the rationale asserted in the Advisory Action dated December 22, 2010, Appellant respectfully requests reversal of the rejection.

*G. THE EXAMINER HAS FAILED TO ESTABLISH A PRIMA FACIE CASE OF OBVIOUSNESS WITH RESPECT TO THE FOURTH GROUP OF CLAIMS.*

As discussed in detail in the previous sections, the Examiner erred by: (1) failing to properly determine the scope and content of the prior art; (2) failing to properly ascertain the differences between the invention of claim 29 and the prior art; and (3) failing to provide a

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<sup>70</sup> MPEP § 2143.

rationale sufficient to explain why the differences acknowledged by the Examiner between Rueter in view of Hatlestad et al. and Appellant's claim 29 would have been obvious to a person of ordinary skill in the art at the time of Appellant's invention. Accordingly, the Examiner has failed to establish a *prima facie* case of obviousness with respect to Appellant's claim 29.

Claims 31 and 32 are each dependent upon independent claim 29 and incorporate all of the limitations of independent claim 29. In support of the rejection of these claims, the Examiner relied upon the same rationale as that which was used to support the rejection of Appellant's claim 1. Accordingly, the Examiner has failed to establish a *prima facie* case of obviousness with respect to claims 31 and 32 for at least the reasons described above with respect to independent claim 29. In light of the deficiencies described above with respect to the Examiner's rejection of independent claim 29, Appellant reserves further comments concerning the rejection of the dependent claims, but neither admits nor acquiesces in the propriety of the Examiner's interpretation of, or application of art to, such claims.

For at least these reasons, the Examiner has failed to establish a *prima facie* case of obviousness with respect to claims 29, 31 and 32. Because the Examiner has failed to establish a *prima facie* case of obviousness, the burden has not shifted to the Appellant to rebut such a rejection. In other words, Appellant cannot be expected to respond to such a rejection until the Examiner provides the requisite analysis and evidence necessary to properly support a *prima facie* case of obviousness. Accordingly, Appellant respectfully requests reversal of the rejection of these claims under 35 U.S.C. § 103(a).

#### ***GROUP 5 – (Claims 33–36 and 38)***

Claims 33–36 and 38 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over (U.S. Patent No. 5,944,745) in view of Hatlestad et al. (U.S. Patent Publ. No. 2004/0122294) and Duffin et al (U.S. Patent No. 6,292,698). Appellant respectfully traverses the rejection.

The Examiner bears the initial burden of factually supporting any *prima facie* case of obviousness under 35 U.S.C. § 103(a). In order to establish a *prima facie* case of obviousness, the Examiner must (1) determine the scope and content of the prior art; (2) ascertain the differences between the claimed invention and the prior art; and (3) resolve the level of ordinary skill in the art. After these factual inquiries have been properly resolved, the Examiner must then



explain why the differences between the prior art and the claimed invention would have been obvious to a person of ordinary skill in the art at the time of Appellant's invention.<sup>71</sup>

The Examiner bears the burden of producing a preponderance of the evidence in support of all factual findings relied upon in support of a conclusion of obviousness.<sup>72</sup> If the Examiner is unable to provide sufficient evidence in support of the Examiner's factual findings, then any obviousness rejection based upon such factual findings should be reversed.

Appellant respectfully submits that the Examiner erred by: (1) failing to properly determine the scope and content of the prior art; (2) failing to properly ascertain the differences between the invention of claim 33 and the prior art; and (3) failing to provide a rationale sufficient to explain why the differences between Rueter in view of Hatlestad et al. and Appellant's claim 33 would have been obvious to a person of ordinary skill in the art at the time of Appellant's invention. Accordingly, the Examiner has failed to establish a *prima facie* case of obviousness with respect to Appellant's claim 33.

Because the Examiner has failed to establish a *prima facie* case of obviousness with respect to claim 33, the burden has not shifted to the Appellant to rebut such a rejection. In other words, Appellant cannot be expected to respond to such a rejection until the Examiner provides the requisite analysis and evidence necessary to properly support a *prima facie* case of obviousness. Accordingly, Appellant respectfully requests reversal of the rejection of these claims under 35 U.S.C. § 103(a).

*A. RUETER IN VIEW OF HATLESTAD ET AL. AND DUFFIN ET AL. FAILS TO DISCLOSE OR SUGGEST ALL OF THE LIMITATIONS RECITED IN APPELLANT'S CLAIM 33.*

Appellant's claim 33 recites a computer-readable medium comprising instructions for causing a programmable processor to receive event data from one or more remote monitors, wherein the one or more remote monitors interrogate a plurality of medical devices implanted in different patients to obtain the event data, wherein the event data describes a plurality of events

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<sup>71</sup> Manual of Patent Examining Procedure (MPEP) § 2141; *Graham v. John Deere Co.*, 383 U.S. 1 (1966).

<sup>72</sup> MPEP § 2142; *Ex parte Frye*, Appeal 2009-006013, pg. 4 (Board of Patent Appeals and Interferences, *precedential opinion*, 2010) (citing *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (stating that "a preponderance of the evidence must show nonpatentability before the PTO may reject the claims of a patent application.")).

that includes at least one of a therapy event and a diagnostic event. The computer-readable medium further comprises instructions for causing a programmable processor to assign a relative importance to each event described by the received event data, wherein the programmable processor is external to the patients.

The applied references fail to disclose or suggest all of the requirements of Appellant's claim 33. As one example, the applied references fail to disclose or suggest *"instructions for causing a programmable processor to . . . receive event data from one or more remote monitors, wherein the one or more remote monitors interrogate a plurality of medical devices implanted in different patients to obtain the event data, wherein the event data describes a plurality of events that includes at least one of a therapy event and a diagnostic event; and assign a relative importance to each event described by the received event data, wherein the programmable processor is external to the patients,"* as recited in Appellant's claim 33.

More specifically, each of the applied references fails to disclose "instructions for causing a programmable processor to . . . receive event data from one or more remote monitors, wherein the one or more remote monitors interrogate a plurality of medical devices implanted in different patients to obtain the event data, wherein the event data describes a plurality of events that includes at least one of a therapy event and a diagnostic event; and assign a relative importance to each event described by the received event data, wherein the programmable processor is external to the patients," as recited in Appellant's claim 33. Moreover, the applied references fail to provide any suggestion that would have rendered it obvious to one of ordinary skill in the art, at the time of Appellant's invention, to arrive at the invention defined by Appellant's claim 33. Accordingly, Appellant respectfully requests reversal of the rejection of Appellant's claim 33.

*B. THE EXAMINER ERRED BY PRESENTING A FACTUAL FINDING THAT IS UNINTELLIGIBLE.*

In support of the rejection of Appellant's claim 33, the Examiner asserted the same unintelligible factual finding that was already discussed above with respect to claim 1. More specifically, the Examiner asserted that "Rueter teaches a method comprising . . . and with the

prioritization engine, the received events.”<sup>73</sup> To the extent that the Examiner’s conclusion of obviousness with respect to claim 33 relies upon the factual finding that “Rueter teaches a method comprising . . . and with the prioritization engine, the received events,” Appellant respectfully requests reconsideration. For purposes of the remainder of the arguments with respect to claim 33, Appellant will assume that the Examiner did not rely upon this factual finding in reaching the Examiner’s conclusion of obviousness.

C. *THE EXAMINER ERRED BY FAILING TO PROPERLY ASCERTAIN THE DIFFERENCES BETWEEN THE INVENTION OF CLAIM 33 AND THE PRIOR ART.*

In support of the rejection of Appellant’s claim 33, the Examiner appears to have relied upon two different combinations of references. The Examiner’s first combination of references is the Examiner’s proposed combination of Rueter in view of Hatlestad et al.<sup>74</sup> The Examiner’s second combination of references includes the Examiner’s first combination of references in view of Duffin et al.

With respect to the first combination of references, the Examiner indicated that the first combination does not teach “prioritizing events obtained from a plurality of medical devices implanted in different patients; and presenting a list of the patients and a list of the events for each of the patients based on the prioritization.”<sup>75</sup> However, the Examiner did not acknowledge that the Examiner’s first combination also does not teach “instructions for causing a programmable processor to: receive event data from one or more remote monitors, wherein the one or more remote monitors interrogate a plurality of medical devices implanted in different patients to obtain the event data, wherein the event data describes a plurality of events that includes at least one of a therapy event and a diagnostic event; and assign a relative importance to each event described by the received event data, wherein the programmable processor is external to the patients,” as recited in Appellant’s claim 33.

In order to establish a *prima facie* case of obviousness, the Examiner has the burden of explaining why the differences between the prior art and the claimed invention would have been

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<sup>73</sup> Final Office Action, page 3, paragraph 4, lines 1–4.

<sup>74</sup> Final Office Action, page 4, line 4 (“Rueter in view of Hatlestad does not teach . . .”).

<sup>75</sup> Final Office Action, page 4, lines 4–6.

obvious to a person of ordinary skill in the art at the time of Appellant's invention. Such an explanation is essential to support an obviousness rejection. In order to give a sufficient explanation for a conclusion of obviousness, it is imperative that all of the differences between the claimed invention and the prior art be properly identified. The failure to identify all differences between the prior art and the claimed invention results in a rationale for obviousness that is insufficient to explain why the overlooked differences would have been obvious to a person of ordinary skill in the art at the time of Appellant's invention.

As discussed above, the Examiner did not identify the following difference between the first combination of prior art and the invention of Appellant's claim 33: the Examiner's first combination does not teach "instructions for causing a programmable processor to: receive event data from one or more remote monitors, wherein the one or more remote monitors interrogate a plurality of medical devices implanted in different patients to obtain the event data, wherein the event data describes a plurality of events that includes at least one of a therapy event and a diagnostic event; and assign a relative importance to each event described by the received event data, wherein the programmable processor is external to the patients," as recited in Appellant's claim 33. This constitutes a difference between the Examiner's proposed combination of prior art and the invention of Appellant's claim 33 that must be taken into consideration by the Examiner. The Examiner appears to have overlooked this difference, and therefore, any rationale in support of the Examiner's conclusion of obvious fails to take into account this overlooked difference. For at least these reasons, Appellant respectfully requests reversal of the rejection to Appellant's claim 33.

*D. THE EXAMINER ERRED BY FAILING TO PROVIDE A RATIONALE SUFFICIENT TO EXPLAIN WHY THE DIFFERENCES BETWEEN RUETER IN VIEW OF HATLESTAD ET AL. AND APPELLANT'S CLAIM 33 WOULD HAVE BEEN OBVIOUS TO A PERSON OF ORDINARY SKILL IN THE ART AT THE TIME OF APPELLANT'S INVENTION.*

In support of the rejection of Appellant's claim 33, the Examiner appears to have relied upon two different combinations of prior art. The Examiner's first combination of references is

the Examiner's proposed combination of Rueter in view of Hatlestad et al.<sup>76</sup> The second combination of prior art is the Examiner's proposed combination of the first combination of references in view of Duffin et al.<sup>77</sup>

As discussed in the previous section, the first combination of prior art, i.e., Rueter in view of Hatlestad et al., fails to teach "instructions for causing a programmable processor to: receive event data from one or more remote monitors, wherein the one or more remote monitors interrogate a plurality of medical devices implanted in different patients to obtain the event data, wherein the event data describes a plurality of events that includes at least one of a therapy event and a diagnostic event; and assign a relative importance to each event described by the received event data, wherein the programmable processor is external to the patients" as recited in Appellant's claim 33. The failure of Rueter in view of Hatlestad et al. to teach these features of Appellant's claim 33 constitutes a difference between Appellant's claim 33 and the prior art.

However, Duffin et al. also fails to disclose all of the missing features identified above with respect to the Examiner's first combination of prior art. Consequently, the Examiner's second combination of prior art, which includes the Examiner's first combination of prior art and Duffin et al., does not include all of the features recited in Appellant's claim 33. These features constitute differences between the invention of Appellant's claim 33 and the prior art of record which must be taken into consideration by the Examiner. Because the Examiner's second combination of prior art does not take into account such differences, the Examiner's explanation of why the second combination of prior art would have been obvious to one of ordinary skill in the art at the time of the invention is not sufficient to explain why the differences between Appellant's claim 33 and the prior art would have been obvious to one of ordinary skill in the art at the time of Appellant's invention. For at least these reasons, Appellant respectfully requests reversal of the rejection to Appellant's claim 33.

*E. THE EXAMINER ERRED BY FAILING TO PROPERLY DETERMINE THE SCOPE  
AND CONTENT OF THE PRIOR ART.*

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<sup>76</sup> Final Office Action, page 4, line 4 ("Rueter in view of Hatlestad does not teach . . .").

<sup>77</sup> Final Office Action, page 4, lines 9–12 ("One of ordinary skill in the art at the time of invention would have found it obvious to combine . . . Rueter . . . Hatlestad . . . and . . . Duffin").

The factual findings relied upon by the Examiner in support of a rejection must be supported by a preponderance of the evidence on record.<sup>78</sup> In the instant case, the Examiner relied upon one or more of the factual findings with regard to the scope and content of the prior art that are not supported by the evidence on record. Because such factual findings are not supported by the evidence on record, the Examiner's determination of the scope and content of the prior art is not correct.

If the scope and content of the prior art is not properly determined, differences between the prior art and Appellant's claimed invention may be overlooked, which may in turn result in an explanation of obviousness that is insufficient to explain why the overlooked differences would have been obvious to a person of ordinary skill in the art at the time of Appellant's invention. Thus, if the evidentiary record does not support the Examiner's factual findings regarding the scope and content of the prior art, any obviousness rejection based upon such factual findings cannot be sustained.

In support of the rejection of Appellant's claim 33, the Examiner asserted that "Hatlestad teaches the prioritization engine to be external."<sup>79</sup> The Examiner did not indicate whether or not the alleged prioritization engine in Hatlestad et al. corresponds to the "programmable processor" recited in Appellant's claim 33. If the Examiner is of the position that the alleged prioritization engine in Hatlestad et al. can be interpreted as the "programmable processor" recited in claim 33, then the Examiner erred in determining the scope and content of the prior art.

More specifically, the "programmable processor" recited in claim 33 "receive[s] event data from one or more remote monitors, wherein the one or more remote monitors interrogate a plurality of medical devices implanted in different patients to obtain the event data." The "programmable processor" recited in claim 33 also "assign[s] a relative importance to each event described by the received event data." When alleging that Hatlestad et al. teaches a prioritization engine, the Examiner appears to be referring to the wellness monitoring device (WMD) described in Hatlestad et al. However, the WMD in Hatlestad et al. does not receive[s] event data from one or more remote monitors that interrogate a plurality of medical devices implanted in different patients to obtain the event data, much assign a relative importance to each event

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<sup>78</sup> MPEP § 2142; *Ex parte Frye*, Appeal 2009-006013, pg. 4 (Board of Patent Appeals and Interferences, *precedential opinion*, 2010) (citing *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (stating that "a preponderance of the evidence must show nonpatentability before the PTO may reject the claims of a patent application.")).

<sup>79</sup> Final Office Action dated October 12, 2010, page 3, paragraph 4, lines 8 - 9.

described by the received event data. In fact, the Examiner already acknowledged that Rueter in view of Hatlestad does not teach “prioritizing events obtained from a plurality of medical devices implanted in different patients.”<sup>80</sup> Therefore, the alleged “prioritization engine” identified by the Examiner in Hatlestad et al. cannot be reasonably interpreted as the “programmable processor” recited in Appellant’s claim 33.

Because the Examiner’s alleged prioritization engine in Hatlestad et al. cannot be reasonably interpreted as the “programmable processor” recited in Appellant’s claim 33, any allegation that the alleged prioritization engine in Hatlestad et al. is external to the patient does not disclose that “programmable processor” of Appellant’s claim 33 is “external to the patients.” Accordingly, the evidence on record fails to support the Examiner’s factual finding that Rueter discloses “the prioritization engine [of claim 33] to be external [to the patients],” as suggested by the Examiner. For at least these reasons, Appellant respectfully requests reversal of the rejection of claim 33.

Appellant notes that the argument described above applies if the Examiner is of the position that the alleged prioritization engine in Hatlestad et al. can be interpreted as the “programmable processor” recited in Appellant’s claim 33. If the Examiner is of the position that the alleged prioritization engine in Hatlestad et al. cannot be interpreted as the “programmable processor” recited in Appellant’s claim 33, then Appellant respectfully requests clarification in the Reply Brief.

*F. THE EXAMINER ERRED BY PROVIDING A RATIONALE IN THE ADVISORY ACTION THAT IS NOT SUPPORTED BY THE FACTUAL FINDINGS WHICH ARE NECESSARY FOR THE USE OF SUCH A RATIONALE.*

In the Advisory Action dated December 22, 2010, the Examiner stated that “[t]he well know elements described are merely a combination of old elements, and in the combination, each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.” The rationale provided by the Examiner in the Advisory Action appears to be the “Combining Prior

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<sup>80</sup> Final Office Action, page 4, lines 4-6.

Art Elements According to Known Methods to Yield Predictable Results” rationale outlined in Section 2143 of the Manual of Patent Examining Procedure (MPEP).

According to the MPEP, in order to reject a claim based on such a rationale, the Examiner “must articulate the following: (1) a finding that the prior art included each element claimed, although not necessarily in a single prior art reference, with the only difference between the claimed invention and the prior art being the lack of actual combination of the elements in a single prior art reference; (2) a finding that one of ordinary skill in the art could have combined the elements as claimed by known methods, and that in combination, each element merely performs the same function as it does separately; (3) a finding that one of ordinary skill in the art would have recognized that the results of the combination were predictable; and (4) whatever additional findings based on the Graham factual inquiries may be necessary, in view of the facts of the case under consideration, to explain a conclusion of obviousness.”<sup>81</sup>

In addition, the evidence on record fails to support a factual finding that one of ordinary skill in the art could have combined the elements as claimed by known methods, and that in combination, each element merely performs the same function as it does separately. As already discussed above, the prior art fails to disclose a programmable processor that performs all of the functions attributed to the programmable processor recited in Appellant’s claim 33. Thus, in order to produce the invention of Appellant’s claim 33, each element in the prior art would not merely perform the same function as it does separately. Accordingly, to the extent that the Examiner’s rejection relies upon the rationale asserted in the Advisory Action dated December 22, 2010, Appellant respectfully requests reversal of the rejection.

*G. THE EXAMINER HAS FAILED TO ESTABLISH A PRIMA FACIE CASE OF OBVIOUSNESS WITH RESPECT TO THE FIFTH GROUP OF CLAIMS.*

As discussed in detail in the previous sections, the Examiner erred by: (1) failing to properly determine the scope and content of the prior art; (2) failing to properly ascertain the differences between the invention of claim 33 and the prior art; and (3) failing to provide a rationale sufficient to explain why the differences between Rueter in view of Hatlestad et al. and Appellant’s claim 33 would have been obvious to a person of ordinary skill in the art at the time

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<sup>81</sup> MPEP § 2143.



of Appellant's invention. Accordingly, the Examiner has failed to establish a *prima facie* case of obviousness with respect to Appellant's claim 33.

Claims 34–36 and 38 are each dependent upon independent claim 33 and incorporate all of the limitations of independent claim 33. In support of the rejection of these claims, the Examiner relied upon the same rationale as that which was used to support the rejection of Appellant's claim 33. Accordingly, the Examiner has failed to establish a *prima facie* case of obviousness with respect to claims 34–36 and 38 for at least the reasons described above with respect to independent claim 33. In light of the deficiencies described above with respect to the Examiner's rejection of independent claim 33, Appellant reserves further comments concerning the rejection of the dependent claims, but neither admits nor acquiesces in the propriety of the Examiner's interpretation of, or application of art to, such claims.

For at least these reasons, the Examiner has failed to establish a *prima facie* case of obviousness with respect to claims 33–36 and 38. Because the Examiner has failed to establish a *prima facie* case of obviousness, the burden has not shifted to the Appellant to rebut such a rejection. In other words, Appellant cannot be expected to respond to such a rejection until the Examiner provides the requisite analysis and evidence necessary to properly support a *prima facie* case of obviousness. Accordingly, Appellant respectfully requests reversal of the rejection of these claims under 35 U.S.C. § 103(a).

#### ***GROUP 6 – (Claims 39–41 and 43)***

Claims 39–41 and 43 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Rueter (U.S. Patent No. 5,944,745) in view of Hatlestad et al. (U.S. Patent Publ. No. 2004/0122294) and Duffin et al (U.S. Patent No. 6,292,698). Appellant respectfully traverses the rejection.

The Examiner bears the initial burden of factually supporting any *prima facie* case of obviousness under 35 U.S.C. § 103(a). In order to establish a *prima facie* case of obviousness, the Examiner must (1) determine the scope and content of the prior art; (2) ascertain the differences between the claimed invention and the prior art; and (3) resolve the level of ordinary skill in the art. After these factual inquiries have been properly resolved, the Examiner must then

explain why the differences between the prior art and the claimed invention would have been obvious to a person of ordinary skill in the art at the time of Appellant's invention.<sup>82</sup>

The Examiner bears the burden of producing a preponderance of the evidence in support of all factual findings relied upon in support of a conclusion of obviousness.<sup>83</sup> If the Examiner is unable to provide sufficient evidence in support of the Examiner's factual findings, then any obviousness rejection based upon such factual findings should be reversed.

Appellant respectfully submits that the Examiner erred by: (1) failing to properly determine the scope and content of the prior art; (2) failing to properly ascertain the differences between the invention of claim 39 and the prior art; and (3) failing to provide a rationale sufficient to explain why the differences between Rueter in view of Hatlestad et al. and Appellant's claim 39 would have been obvious to a person of ordinary skill in the art at the time of Appellant's invention. Accordingly, the Examiner has failed to establish a *prima facie* case of obviousness with respect to Appellant's claim 39.

Because the Examiner has failed to establish a *prima facie* case of obviousness with respect to claim 39, the burden has not shifted to the Appellant to rebut such a rejection. In other words, Appellant cannot be expected to respond to such a rejection until the Examiner provides the requisite analysis and evidence necessary to properly support a *prima facie* case of obviousness. Accordingly, Appellant respectfully requests reversal of the rejection of these claims under 35 U.S.C. § 103(a).

*A. RUETER IN VIEW OF HATLESTAD ET AL. AND DUFFIN ET AL. FAILS TO DISCLOSE OR SUGGEST ALL OF THE LIMITATIONS RECITED IN APPELLANT'S CLAIM 39.*

Appellant's claim 39 recites a device comprising a prioritization engine to receive events from a plurality of remote monitors, and to prioritize the received events, wherein each of the remote monitors obtains the events from interrogation of a medical device implanted within a different patient, wherein the events include therapy events and diagnostic events, and wherein

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<sup>82</sup> Manual of Patent Examining Procedure (MPEP) § 2141; *Graham v. John Deere Co.*, 383 U.S. 1 (1966).

<sup>83</sup> MPEP § 2142; *Ex parte Frye*, Appeal 2009-006013, pg. 4 (Board of Patent Appeals and Interferences, *precedential opinion*, 2010) (citing *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (stating that "a preponderance of the evidence must show nonpatentability before the PTO may reject the claims of a patent application.")).

the prioritization engine and the remote monitors are both external to the patient, and a database to store the prioritized events.

The applied references fail to disclose or suggest all of the requirements of Appellant's claim 39. As one example, the applied references fail to disclose or suggest "*a prioritization engine to receive events from a plurality of remote monitors, and to prioritize the received events, wherein each of the remote monitors obtains the events from interrogation of a medical device implanted within a different patient, wherein the events include therapy events and diagnostic events, and wherein the prioritization engine and the remote monitors are both external to the patient,*" as recited in Appellant's claim 39. As another example, the applied references fail to disclose or suggest "*a database to store the prioritized events,*" as also recited in Appellant's claim 39.

More specifically, each of the applied references fails to disclose "*a prioritization engine to receive events from a plurality of remote monitors, and to prioritize the received events, wherein each of the remote monitors obtains the events from interrogation of a medical device implanted within a different patient, wherein the events include therapy events and diagnostic events, and wherein the prioritization engine and the remote monitors are both external to the patient, and a database to store the prioritized events,*" as recited in Appellant's claim 39. Moreover, the applied references fail to provide any suggestion that would have rendered it obvious to one of ordinary skill in the art, at the time of Appellant's invention, to arrive at the invention defined by Appellant's claim 39. Accordingly, Appellant respectfully requests reversal of the rejection of Appellant's claim 39.

*B. THE EXAMINER ERRED BY PRESENTING A FACTUAL FINDING THAT IS UNINTELLIGIBLE.*

In support of the rejection of Appellant's claim 39, the Examiner asserted the same unintelligible factual finding that was already discussed above with respect to claim 39. More specifically, the Examiner asserted that "Rueter teaches a method comprising . . . and with the prioritization engine, the received events."<sup>84</sup> To the extent that the Examiner's conclusion of obviousness with respect to claim 39 relies upon the factual finding that "Rueter teaches a

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<sup>84</sup> Final Office Action, page 3, paragraph 4, lines 1-4.

method comprising . . . and with the prioritization engine, the received events,” Appellant respectfully requests reconsideration. For purposes of the remainder of the arguments with respect to claim 39, Appellant will assume that the Examiner did not rely upon this factual finding in reaching the Examiner’s conclusion of obviousness.

C. *THE EXAMINER ERRED BY FAILING TO PROPERLY ASCERTAIN THE DIFFERENCES BETWEEN THE INVENTION OF CLAIM 39 AND THE PRIOR ART.*

In support of the rejection of Appellant’s claim 39, the Examiner appears to have relied upon two different combinations of references. The Examiner’s first combination of references is the Examiner’s proposed combination of Rueter in view of Hatlestad et al.<sup>85</sup> The Examiner’s second combination of references includes the Examiner’s first combination of references in view of Duffin et al.<sup>86</sup>

With respect to the first combination of references, the Examiner indicated that the first combination does not teach “prioritizing events obtained from a plurality of medical devices implanted in different patients; and presenting a list of the patients and a list of the events for each of the patients based on the prioritization.”<sup>87</sup> However, the Examiner did not acknowledge that the Examiner’s first combination also does not teach “a prioritization engine to receive events from a plurality of remote monitors, and to prioritize the received events, wherein each of the remote monitors obtains the events from interrogation of a medical device implanted within a different patient, wherein the events include therapy events and diagnostic events, and wherein the prioritization engine and the remote monitors are both external to the patient, and a database to store the prioritized events,” as recited in Appellant’s claim 39.

In order to establish a *prima facie* case of obviousness, the Examiner has the burden of explaining why the differences between the prior art and the claimed invention would have been obvious to a person of ordinary skill in the art at the time of Appellant’s invention. Such an explanation is essential to support an obviousness rejection. In order to give a sufficient

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<sup>85</sup> Final Office Action, page 4, line 4 (“Rueter in view of Hatlestad does not teach . . .”).

<sup>86</sup> Final Office Action, page 4, lines 9–12 (“One of ordinary skill in the art at the time of invention would have found it obvious to combine . . . Rueter . . . Hatlestad . . . and . . . Duffin”).

<sup>87</sup> Final Office Action, page 4, lines 4–6.

explanation for a conclusion of obviousness, it is imperative that all of the differences between the claimed invention and the prior art be properly identified. The failure to identify all differences between the prior art and the claimed invention results in a rationale for obviousness that is insufficient to explain why the overlooked differences would have been obvious to a person of ordinary skill in the art at the time of Appellant's invention.

As discussed above, the Examiner did not identify the following difference between the first combination and the invention of Appellant's claim 39: the Examiner's first combination does not teach "a prioritization engine to receive events from a plurality of remote monitors, and to prioritize the received events, wherein each of the remote monitors obtains the events from interrogation of a medical device implanted within a different patient, wherein the events include therapy events and diagnostic events, and wherein the prioritization engine and the remote monitors are both external to the patient, and a database to store the prioritized events," as recited in Appellant's claim 39. This constitutes a difference between the Examiner's proposed combination of prior art and the invention of Appellant's claim 39 that must be taken into consideration by the Examiner. The Examiner appears to have overlooked this difference, and therefore, any rationale in support of the Examiner's conclusion of obvious fails to take into account this overlooked difference. For at least these reasons, Appellant respectfully requests reversal of the rejection to Appellant's claim 39.

*D. THE EXAMINER ERRED BY FAILING TO PROVIDE A RATIONALE SUFFICIENT TO EXPLAIN WHY THE DIFFERENCES BETWEEN RUETER IN VIEW OF HATLESTAD ET AL. AND APPELLANT'S CLAIM 39 WOULD HAVE BEEN OBVIOUS TO A PERSON OF ORDINARY SKILL IN THE ART AT THE TIME OF APPELLANT'S INVENTION.*

In support of the rejection of Appellant's claim 39, the Examiner appears to have relied upon two different combinations of prior art. The Examiner's first combination of references is the Examiner's proposed combination of Rueter in view of Hatlestad et al.<sup>88</sup> The second

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<sup>88</sup> Final Office Action, page 4, line 4 ("Rueter in view of Hatlestad does not teach . . .").

combination of prior art is the Examiner's proposed combination of the first combination of references in view of Duffin et al.<sup>89</sup>

As discussed in the previous section, the first combination of prior art, i.e., Rueter in view of Hatlestad et al., fails to teach "a prioritization engine to receive events from a plurality of remote monitors, and to prioritize the received events, wherein each of the remote monitors obtains the events from interrogation of a medical device implanted within a different patient, wherein the events include therapy events and diagnostic events, and wherein the prioritization engine and the remote monitors are both external to the patient; and a database to store the prioritized events," as recited in Appellant's claim 39. The failure of Rueter in view of Hatlestad et al. to teach these features of Appellant's claim 39 constitutes a difference between Appellant's claim 39 and the prior art.

However, Duffin et al. also fails to disclose all of the missing features identified above with respect to the Examiner's first combination of prior art. Consequently, the Examiner's second combination of prior art, which includes the Examiner's first combination of prior art and Duffin et al., does not include all of the features recited in Appellant's claim 39. These features constitute differences between the invention of Appellant's claim 39 and the prior art of record which must be taken into consideration by the Examiner. Because the Examiner's second combination of prior art does not take into account such differences, the Examiner's explanation of why the second combination of prior art would have been obvious to one of ordinary skill in the art at the time of the invention is not sufficient to explain why the differences between Appellant's claim 39 and the prior art would have been obvious to one of ordinary skill in the art at the time of Appellant's invention. For at least these reasons, Appellant respectfully requests reversal of the rejection to Appellant's claim 39.

*E. THE EXAMINER ERRED BY FAILING TO PROPERLY DETERMINE THE SCOPE AND CONTENT OF THE PRIOR ART.*

The factual findings relied upon by the Examiner in support of a rejection must be

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<sup>89</sup> Final Office Action, page 4, lines 9–12 ("One of ordinary skill in the art at the time of invention would have found it obvious to combine . . . Rueter . . . Hatlestad . . . and . . . Duffin").

supported by a preponderance of the evidence on record.<sup>90</sup> In the instant case, the Examiner relied upon one or more of the factual findings with regard to the scope and content of the prior art that are not supported by the evidence on record. Because such factual findings are not supported by the evidence on record, the Examiner's determination of the scope and content of the prior art is not correct.

If the scope and content of the prior art is not properly determined, differences between the prior art and Appellant's claimed invention may be overlooked, which may in turn result in an explanation of obviousness that is insufficient to explain why the overlooked differences would have been obvious to a person of ordinary skill in the art at the time of Appellant's invention. Thus, if the evidentiary record does not support the Examiner's factual findings regarding the scope and content of the prior art, any obviousness rejection based upon such factual findings cannot be sustained.

In support of the rejection of Appellant's claim 39, the Examiner asserted that "Hatlestad teaches the prioritization engine to be external."<sup>91</sup> The Examiner did not indicate whether or not the alleged prioritization engine in Hatlestad et al. corresponds to the "prioritization engine" recited in Appellant's claim 39. If the Examiner is of the position that the alleged prioritization engine in Hatlestad et al. can be interpreted as the "prioritization engine" recited in Appellant's claim 39, then the Examiner erred in determining the scope and content of the prior art.

More specifically, the "prioritization engine" recited in claim 39 is configured to "receive events from a plurality of remote monitors, and to prioritize the received events, wherein each of the remote monitors obtains the events from interrogation of a medical device implanted within a different patient, wherein the events include therapy events and diagnostic events." When alleging that Hatlestad et al. teaches a prioritization engine, the Examiner appears to be referring to the wellness monitoring device (WMD) described in Hatlestad et al. However, the WMD in Hatlestad et al. does not receive events from a plurality of remote monitors that obtain the events from interrogation of a medical device implanted within a different patient, much less prioritize such events. In fact, the Examiner already acknowledged that Rueter in view of Hatlestad does not teach "prioritizing events obtained from a plurality of medical devices implanted in different

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<sup>90</sup> MPEP § 2142; *Ex parte Frye*, Appeal 2009-006013, pg. 4 (Board of Patent Appeals and Interferences, *precedential opinion*, 2010) (citing *Ethicon, Inc. v. Quigg*, 849 F.2d 1422, 1427 (Fed. Cir. 1988) (stating that "a preponderance of the evidence must show nonpatentability before the PTO may reject the claims of a patent application.")).

<sup>91</sup> Final Office Action dated October 12, 2010, page 3, paragraph 4, lines 8-9.

patients.”<sup>92</sup> Therefore, the alleged “prioritization engine” identified by the Examiner in Hatlestad et al. cannot be reasonably interpreted as the “prioritization engine” recited in Appellant’s claim 39.

Because the Examiner’s alleged prioritization engine in Hatlestad et al. cannot be reasonably interpreted as the “prioritization engine” recited in Appellant’s claim 39, any allegation that the alleged prioritization engine in Hatlestad et al. is external to the patient does not disclose that the “prioritization engine” of Appellant’s claim 39 is “external to the patients.” Accordingly, the evidence on record fails to support the Examiner’s factual finding that Rueter discloses “the prioritization engine [of claim 39] to be external [to the patients],” as suggested by the Examiner. For at least these reasons, Appellant respectfully requests reversal of the rejection of claim 39.

Appellant notes that the argument described above applies if the Examiner is of the position that the alleged prioritization engine in Hatlestad et al. can be interpreted as the “prioritization engine” recited in Appellant’s claim 39. If the Examiner is of the position that the alleged prioritization engine in Hatlestad et al. cannot be interpreted as the “prioritization engine” recited in Appellant’s claim 39, then Appellant respectfully requests clarification in the Reply Brief.

*F. THE EXAMINER ERRED BY PROVIDING A RATIONALE IN THE ADVISORY ACTION THAT IS NOT SUPPORTED BY THE FACTUAL FINDINGS WHICH ARE NECESSARY FOR THE USE OF SUCH A RATIONALE.*

In the Advisory Action dated December 22, 2010, the Examiner stated that “[t]he well know elements described are merely a combination of old elements, and in the combination, each element merely would have performed the same function as it did separately, and one of ordinary skill in the art would have recognized that the results of the combination were predictable.” The rationale provided by the Examiner in the Advisory Action appears to be the “Combining Prior Art Elements According to Known Methods to Yield Predictable Results” rationale outlined in Section 2143 of the Manual of Patent Examining Procedure (MPEP).

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<sup>92</sup> Final Office Action, page 4, lines 4–6.



According to the MPEP, in order to reject a claim based on such a rationale, the Examiner “must articulate the following: (1) a finding that the prior art included each element claimed, although not necessarily in a single prior art reference, with the only difference between the claimed invention and the prior art being the lack of actual combination of the elements in a single prior art reference; (2) a finding that one of ordinary skill in the art could have combined the elements as claimed by known methods, and that in combination, each element merely performs the same function as it does separately; (3) a finding that one of ordinary skill in the art would have recognized that the results of the combination were predictable; and (4) whatever additional findings based on the Graham factual inquiries may be necessary, in view of the facts of the case under consideration, to explain a conclusion of obviousness.”<sup>93</sup>

The Examiner, however, has failed to articulate one or more of the factual findings needed to reject Appellant’s claim 39 based on such a rationale. For example, the Examiner failed to articulate that the prior art included each element claimed, although not necessarily in a single prior art reference, with the only difference between the claimed invention and the prior art being the lack of actual combination of the elements in a single prior art reference. Moreover, the evidence on record fails to support such a factual finding. For example, the prior art fails to disclose “a prioritization engine to receive events from a plurality of remote monitors, and to prioritize the received events, wherein each of the remote monitors obtains the events from interrogation of a medical device implanted within a different patient, wherein the events include therapy events and diagnostic events, and wherein the prioritization engine and the remote monitors are both external to the patient,” as recited in Appellant’s claim 39. In addition, as already discussed in the previous sections, other differences exist between Appellant’s claim 39 and the prior art besides the lack of actual combination of the elements in a single prior art reference. Accordingly, to the extent that the Examiner’s rejection relies upon the rationale asserted in the Advisory Action dated December 22, 2010, Appellant respectfully requests reversal of the rejection.

In addition, the evidence on record fails to support a factual finding that one of ordinary skill in the art could have combined the elements as claimed by known methods, and that in combination, each element merely performs the same function as it does separately. As already discussed above, the prior art fails to disclose all of the elements of Appellant’s claim 39. As

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<sup>93</sup> MPEP § 2143.

such, it is not possible to make a finding that each element merely performs the same function as it does separately. Accordingly, to the extent that the Examiner's rejection relies upon the rationale asserted in the Advisory Action dated December 22, 2010, Appellant respectfully requests reversal of the rejection.

*G. THE EXAMINER HAS FAILED TO ESTABLISH A PRIMA FACIE CASE OF OBVIOUSNESS WITH RESPECT TO THE SIXTH GROUP OF CLAIMS.*

As discussed in detail in the previous sections, the Examiner erred by: (1) failing to properly determine the scope and content of the prior art; (2) failing to properly ascertain the differences between the invention of claim 39 and the prior art; and (3) failing to provide a rationale sufficient to explain why the differences between Rueter in view of Hatlestad et al. and Appellant's claim 39 would have been obvious to a person of ordinary skill in the art at the time of Appellant's invention. Accordingly, the Examiner has failed to establish a *prima facie* case of obviousness with respect to Appellant's claim 39.

Claims 40, 41 and 43 are each dependent upon independent claim 39 and incorporate all of the limitations of independent claim 39. In support of the rejection of these claims, the Examiner relied upon the same rationale as that which was used to support the rejection of Appellant's claim 8. Accordingly, the Examiner has failed to establish a *prima facie* case of obviousness with respect to claims 40, 41 and 43 for at least the reasons described above with respect to independent claim 39. In light of the deficiencies described above with respect to the Examiner's rejection of independent claim 39, Appellant reserves further comments concerning the rejection of the dependent claims, but neither admits nor acquiesces in the propriety of the Examiner's interpretation of, or application of art to, such claims.

For at least these reasons, the Examiner has failed to establish a *prima facie* case of obviousness with respect to claims 39-41 and 43. Because the Examiner has failed to establish a *prima facie* case of obviousness, the burden has not shifted to the Appellant to rebut such a rejection. In other words, Appellant cannot be expected to respond to such a rejection until the Examiner provides the requisite analysis and evidence necessary to properly support a *prima facie* case of obviousness. Accordingly, Appellant respectfully requests reversal of the rejection of these claims under 35 U.S.C. § 103(a).

## **SECOND GROUND OF REJECTION UNDER APPEAL**

### ***GROUP 7 – (Claims 5 and 6)***

Claims 5 and 6 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Rueter (U.S. Patent No. 5,944,745) in view of Hatlestad et al. (U.S. Patent Publ. No. 2004/0122294) and Duffin et al. and Hwang (U.S. Patent No. 5,920,271). Appellant respectfully traverses the rejection.

In support of the rejection of Appellant's claims 5 and 6, the Examiner incorporated the rejection of Appellant's claim 1. Consequently, the Examiner has failed to establish a *prima facie* case of obviousness for at least the same reasons as those described above with respect to independent claim 1. Moreover, Hwang fails to overcome the deficiencies of the Examiner's proposed combination of Rueter, Hatlestad et al., and Duffin et al. Accordingly, Appellant respectfully requests reversal of the rejection of claims 5 and 6 under 35 U.S.C. § 103(a).

In light of the deficiencies described above with respect to the Examiner's rejection of independent claim 1, Appellant reserves further comments concerning the rejection of the dependent claims, but neither admits nor acquiesces in the propriety of the Examiner's interpretation of, or application of art to, such claims.

### ***GROUP 8 – (Claims 14 and 15)***

Claims 14 and 15 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Rueter (U.S. Patent No. 5,944,745) in view of Hatlestad et al. (U.S. Patent Publ. No. 2004/0122294) and Duffin et al. and Hwang (U.S. Patent No. 5,920,271). Appellant respectfully traverses the rejection.

In support of the rejection of Appellant's claims 14 and 15, the Examiner incorporated the rejection of Appellant's claim 8. Consequently, the Examiner has failed to establish a *prima facie* case of obviousness for at least the same reasons as those described above with respect to independent claim 8. Moreover, Hwang fails to overcome the deficiencies of the Examiner's proposed combination of Rueter, Hatlestad et al., and Duffin et al. Accordingly, Appellant respectfully requests reversal of the rejection of claims 14 and 15 under 35 U.S.C. § 103(a).

In light of the deficiencies described above with respect to the Examiner's rejection of independent claim 8, Appellant reserves further comments concerning the rejection of the dependent claims, but neither admits nor acquiesces in the propriety of the Examiner's interpretation of, or application of art to, such claims.

***GROUP 9 – (Claims 26 and 27)***

Claims 26 and 27 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Rueter (U.S. Patent No. 5,944,745) in view of Hatlestad et al. (U.S. Patent Publ. No. 2004/0122294) and Duffin et al. and Hwang (U.S. Patent No. 5,920,271). Appellant respectfully traverses the rejection.

In support of the rejection of Appellant's claims 26 and 27, the Examiner incorporated the rejection of Appellant's claim 17. Consequently, the Examiner has failed to establish a *prima facie* case of obviousness for at least the same reasons as those described above with respect to independent claim 17. Moreover, Hwang fails to overcome the deficiencies of the Examiner's proposed combination of Rueter, Hatlestad et al., and Duffin et al. Accordingly, Appellant respectfully requests reversal of the rejection of claims 26 and 27 under 35 U.S.C. § 103(a).

In light of the deficiencies described above with respect to the Examiner's rejection of independent claim 17, Appellant reserves further comments concerning the rejection of the dependent claims, but neither admits nor acquiesces in the propriety of the Examiner's interpretation of, or application of art to, such claims.

**THIRD GROUND OF REJECTION UNDER APPEAL**

***GROUP 10 – (Claims 20, 21 and 46)***

Claims 20, 21 and 46 stand rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Rueter (U.S. Patent No. 5,944,745) in view of Hatlestad et al. (U.S. Patent Publ. No. 2004/0122294) and Duffin et al. (U.S. Patent No. 6,292,698) and Webb et al. (U.S. Patent No. 7,060,031). Appellant respectfully traverses the rejection.

In support of the rejection of Appellant's claims 20, 21 and 46, the Examiner incorporated the rejection of Appellant's claim 17. Consequently, the Examiner has failed to

establish a *prima facie* case of obviousness for at least the same reasons as those described above with respect to independent claim 17. Moreover, Webb et al. fails to overcome the deficiencies of the Examiner's proposed combination of Rueter, Hatlestad et al., and Duffin et al. Accordingly, Appellant respectfully requests reversal of the rejection of claims 20, 21 and 46 under 35 U.S.C. § 103(a).

In light of the deficiencies described above with respect to the Examiner's rejection of independent claim 17, Appellant reserves further comments concerning the rejection of the dependent claims, but neither admits nor acquiesces in the propriety of the Examiner's interpretation of, or application of art to, such claims.

In addition, the Examiner erred with respect to the rejection of claim 46 by failing to allege what portion of Webb et al. the Examiner considers to disclose "wherein the derivation engine analyzes the received events, derives at least one database query based on the analysis, and creates an additional database entry based on a result of the at least one database query," as recited in claim 46. The cited portions of Webb et al. do not appear to disclose such a feature. For at least this reason, Appellant respectfully requests reversal of the rejection of claim 46 under 35 U.S.C. § 103(a).

#### ***GROUP 11 – (Claim 42)***

Claim 42 stands rejected under 35 U.S.C. § 103(a) as allegedly being unpatentable over Rueter (U.S. Patent No. 5,944,745) in view of Hatlestad et al. (U.S. Patent Publ. No. 2004/0122294) and Duffin et al. (U.S. Patent No. 6,292,698) and Webb et al. (U.S. Patent No. 7,060,031). Appellant respectfully traverses the rejection.

In support of the rejection of Appellant's claim 42, the Examiner incorporated the rejection of Appellant's claim 39. Consequently, the Examiner has failed to establish a *prima facie* case of obviousness for at least the same reasons as those described above with respect to independent claim 39. Moreover, Webb et al. fails to overcome the deficiencies of the Examiner's proposed combination of Rueter, Hatlestad et al., and Duffin et al. Accordingly, Appellant respectfully requests reversal of the rejection to claim 42 under 35 U.S.C. § 103(a).

In light of the deficiencies described above with respect to the Examiner's rejection of independent claim 39, Appellant reserves further comments concerning the rejection of the

dependent claims, but neither admits nor acquiesces in the propriety of the Examiner's interpretation of, or application of art to, such claims.

#### **FOURTH GROUND OF REJECTION UNDER APPEAL**

##### ***GROUP 12 – (Claim 45)***

Claim 45 stands rejected under 35 U.S.C. § 103(a) as allegedly being obvious by Rueter (U.S. Patent No. 5,944,745) in view of Hatlestad et al. (U.S. Patent Publ. No. 2004/0122294) and Duffin et al (U.S. Patent No. 6,292,698) and Tamura (U.S. Patent No. 5,434,611). Appellant respectfully traverses the rejection.

In support of the rejection of Appellant's claim 45, the Examiner incorporated the rejection of Appellant's claim 1. Consequently, the Examiner has failed to establish a *prima facie* case of obviousness for at least the same reasons as those described above with respect to independent claim 1. Moreover, Tamura fails to overcome the deficiencies of the Examiner's proposed combination of Rueter, Hatlestad et al., and Duffin et al. Accordingly, Appellant respectfully requests reversal of the rejection of claim 45 under 35 U.S.C. § 103(a).

In light of the deficiencies described above with respect to the Examiner's rejection of independent claim 1, Appellant reserves further comments concerning the rejection of the dependent claims, but neither admits nor acquiesces in the propriety of the Examiner's interpretation of, or application of art to, such claims.

In addition, the cited portion of Tamura states "the voice information and the images which have been sent from the cameras and the sender-receiver terminals are received in the time sharing manner by the monitoring television receiver and the transmitter-receiver of the doctor's terminal 130 in the medical office. As a result, a plurality of patients can be automatically monitored."<sup>94</sup> Automatically monitoring a plurality of patients, however, does not necessarily include "presenting the list of the patients and the list of events such that that a clinician can simultaneously view events obtained from multiple implantable medical devices associated with multiple patients," as recited in Appellant's claim 45. Accordingly, the cited portion of Tamura cannot be reasonably interpreted as disclosing the features recited in Appellant's claim 45. For

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<sup>94</sup> Tamura, col. 5, lines 35–39.

at least these reasons, Appellant respectfully requests reversal of the rejection of claim 45 under 35 U.S.C. § 103(a).

***Conclusion of Argument***

In view of Appellant's arguments, the final rejections of Appellant's claims are improper and should be reversed. Reversal of all pending rejections and allowance of all pending claims is respectfully requested. Appellant respectfully requests separate review by the Board for each of Groups 1–12 addressed above under separate headings.

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**CLAIMS APPENDIX**

1. A method comprising:

receiving events at a prioritization engine from one or more remote monitors, wherein the one or more remote monitors obtain the events from interrogation of a plurality of medical devices implanted within different patients, wherein the events include therapy events and diagnostic events, and wherein the prioritization engine and the one or more remote monitors are both external to the patients;

prioritizing, with the prioritization engine, the received events; and

presenting, with a user interface device, a list of the patients and a list of the events for each of the patients based on the prioritization.

3. The method of claim 1, wherein prioritizing events includes prioritizing the events based on a relative importance associated with the events.

4. The method of claim 1, further comprising invoking a special action in response to an event with a relative importance that exceeds a threshold.

5. The method of claim 4, wherein the special action comprises using a conspicuous text format when presenting data from the event.

6. The method of claim 5, wherein the conspicuous text format includes at least one of font, bold text, highlighted text, underlined text, and italicized text.



7. The method of claim 4, wherein the special action includes at least one of generating an alarm, notifying a clinician, and notifying a patient.
8. A method comprising:
  - interrogating, with one or more remote monitors, a plurality of medical devices implanted in different patients to obtain event data;
  - receiving, with a prioritization engine, the event data from the one or more remote monitors, wherein the event data describes a plurality of events that includes at least one of a therapy event and a diagnostic event, and wherein the prioritization engine is external to the patients; and
  - assigning, with the prioritization engine, a relative importance to each of the events described by the received event data.
9. The method of claim 8, further comprising prioritizing the events obtained from the interrogation based on the relative importance.
10. The method of claim 8, further comprising assigning the relative importance based on a set of rules.
11. The method of claim 8, further comprising presenting a prioritized list of the patients and the events for each of the patients based on the relative importance.

13. The method of claim 8, further comprising invoking a special action in response to an event with a relative importance that exceeds a threshold.
14. The method of claim 13, wherein the special action comprises using a conspicuous text format when presenting data from the event.
15. The method of claim 14, wherein the conspicuous text format includes at least one of bold text, highlighted text, underlined text, and italicized text.
16. The method of claim 13, wherein the special action includes at least one of generating an alarm, notifying a clinician, and notifying a patient.
17. A system comprising:
  - a prioritization engine to receive events from one or more remote monitors, and to prioritize the received events, wherein the one or more remote monitors obtain the events from interrogation of a plurality of medical devices implanted within different patients, wherein the events include therapy events and diagnostic events, and wherein the prioritization engine and the one or more remote monitors are both external to the patients; and
  - a user interface device to present a list of the patients and a list of the events for each of the patients based on the prioritization.
18. The system of claim 17, further comprising a data management application that parses raw data from the implantable medical device, and populates fields of a database with event data.

19. The system of claim 18, wherein the event data comprises one of patient name, device type, date event data was parsed, and event type.

20. The system of claim 17, further comprising a database to store the prioritized events, wherein the user interface device includes a web browser to access the prioritized events via a network connection.

21. The system of claim 20, further comprising a derivation engine to generate additional events based on the stored events.

22. The system of claim 17, further comprising a rule engine to assign relative importance to the events based on rules from a rule database.

24. The system of claim 17, wherein the prioritization engine prioritizes the events based on a relative importance associated with the events.

25. The system of claim 17, further comprising a notification device to perform a special action in response to an event with relative importance that exceeds a threshold, wherein the relative importance is assigned to the event based on a level of priority for the event.

26. The system of claim 25, wherein the special action comprises using a conspicuous text format when presenting data from the event.

27. The system of claim 26, wherein the conspicuous text format includes at least one of bold text, highlighted text, underlined text, and italicized text.

28. The system of claim 25, wherein the special action includes at least one of generating an alarm, notifying a clinician, and notifying a patient.

29. A computer-readable medium comprising instructions for causing a programmable processor to:

receive events from a plurality of remote monitors, wherein each of the remote monitors obtains the events from interrogation of a medical device implanted within a different patient, wherein the events include therapy events and diagnostic events, and wherein the programmable processor and the remote monitors are both external to the patients;

prioritize the received events; and

present a list of the patients and a list of the events for each of the patients based on the prioritization.

31. The computer-readable medium of claim 29, wherein the instructions cause the processor to prioritize events based on a relative importance associated with the events.

32. The computer-readable medium of claim 29, wherein the instructions cause the processor to invoke a special action in response to an event with relative importance that exceeds a threshold.

33. A computer-readable medium comprising instructions for causing a programmable processor to:

receive event data from one or more remote monitors, wherein the one or more remote monitors interrogate a plurality of medical devices implanted in different patients to obtain the event data, wherein the event data describes a plurality of events that includes at least one of a therapy event and a diagnostic event; and

assign a relative importance to each event described by the received event data, wherein the programmable processor is external to the patients.

34. The computer-readable medium of claim 33, wherein the instructions cause the processor to prioritize the received events based on relative importance.

35. The computer-readable medium of claim 33, wherein the instructions cause the processor to assign the relative importance based on a set of rules.

36. The computer-readable medium of claim 33, wherein the instructions cause the processor to present a list of the patients and a list of the events for each of the patients based on the prioritization.

38. The computer-readable medium of claim 33, wherein the instructions cause the processor to invoke a special action in response to an event with a relative importance that exceeds a threshold, wherein the relative importance is assigned to the event based on a level of priority for the event.

39. A device comprising:

a prioritization engine to receive events from a plurality of remote monitors, and to prioritize the received events, wherein each of the remote monitors obtains the events from interrogation of a medical device implanted within a different patient, wherein the events include therapy events and diagnostic events, and wherein the prioritization engine and the remote monitors are both external to the patient; and

a database to store the prioritized events.

40. The device of claim 39, further comprising a data management application that parses raw data from the implantable medical device, and populates fields of the database with event data.

41. The device of claim 39, wherein the event data comprises one of patient name, device type, date event data was parsed, and event type.

42. The device of claim 39, further comprising a derivation engine to generate additional events based on the stored events.

43. The device of claim 39, further comprising a rule engine to assign relative importance to the events based on rules from a rule database, wherein the prioritization engine prioritizes the events based on the relative importance.

45. The method of claim 1, wherein presenting, with a user interface device, the list of the patients and the list of the events comprises presenting the list of the patients and the list of events such that that a clinician can simultaneously view events obtained from multiple implantable medical devices associated with multiple patients.

46. The system of claim 21, wherein the derivation engine analyzes the received events, derives at least one database query based on the analysis, and creates an additional database entry based on a result of the at least one database query.

47. The system of claim 22, wherein the rule engine uses rules stored within a rulebase to assign the relative importance to the events.

**EVIDENCE APPENDIX**

None.



**RELATED PROCEEDINGS APPENDIX**

None.